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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

23 Cr. 134 (VSB)

6 CALVIN DARDEN, JR.,

7 Trial

Defendant.

8 -----x
9 New York, N.Y.
10 October 1, 2024
11 9:45 a.m.

12 Before:

13 HON. VERNON S. BRODERICK,

14 APPEARANCES District Judge
-and Jury-

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 KEVIN MEAD

18 STEPHEN J. RITCHIN

19 WILLIAM C. KINDER

20 BRANDON C. THOMPSON

21 Assistant United States Attorneys

22 DONALDSON CHILLIEST & McDANIEL LLP

23 BY: XAVIER R. DONALDSON

-and-

24 ANTHONY RICCO

25 STEVEN Z. LEGON

ERICA A. REED

Attorneys for Defendant

Also Present:

Alexander Ross, Paralegal

Arjun Ahuja, Paralegal

Melissa Baccari, FBI Special Agent

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1 (Trial resumed; jury not present)

2 THE COURT: Okay. So there are a couple of issues to
3 take up. The first issue I want to deal with is the issue of
4 the 404(b) evidence. I received a letter that was filed on the
5 docket last night from Ms. Reed in further opposition to the
6 government's request to admit principally the testimony. Is
7 there anything else that the parties wish to add with regard to
8 the 404(b) evidence? I'll hear that now. First from the
9 government's since it's their application, and I'll hear from
10 Ms. Reed if there's anything else.

11 MR. MEAD: Very briefly, your Honor. I think there's
12 overwhelming evidence that this phone impersonation as set
13 forth in the government's letter. The defense letter doesn't
14 really engage with any of that evidence or contest any of it.
15 Walking through the four points the defense letter makes. We
16 do not contest -- we do not disagree that Calvin Darden, Sr.,
17 had one or two real conversations with people connected to the
18 Atlanta Dream. That of course does not mean that he was not
19 also impersonated.

20 THE COURT: That's right.

21 MR. MEAD: As to number two, sufficient similarity.
22 This is the defendant impersonating literally the same person
23 that he did in the prior fraud. I can't imagine a crime that
24 is more similar. As to number three, premature introduction.
25 This is going to be the very, very last thing in the

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1 government's case. There's no rule saying we have to wait to
2 see if the defense puts on a case before we introduce something
3 like that. Knowledge and intent have not been disclaimed.
4 They would have needed to be disclaimed I think in the opening,
5 and certainly by now.

6 And as to prejudicial impact. We're introducing
7 evidence that the defendant did the exact same thing that he
8 did in this case. I don't understand how it could be more
9 prejudicial than the current allegations since it's the same
10 crime essentially. Happy to answer any other questions from
11 the Court.

12 THE COURT: Ms. Reed, anything else from the defense?

13 MS. REED: Yes, your Honor. So I will address the
14 bullet points in the government's it submission. It's
15 certainly not the exact same thing. The bullet points that
16 they listed all pertain to communications between Mr. Darden
17 and the alleged co-conspirator, which is certainly not the case
18 that was described in the testimony in the proffer in which
19 Mr. Darden cooperated.

20 THE COURT: But isn't it here both Mr. Briscoe, but
21 also Mr. Schmidt?

22 MS. REED: And Mr. Schmidt testified that at no point
23 did he think that he was talking to anyone other than Calvin
24 Darden, Sr.

25 THE COURT: But isn't that the point? In other words,

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1 if the point of the impersonation is to get someone to believe
2 that you are in fact the person you're claiming to be, to lull
3 them, to be able to suggest to them certain things that
4 perhaps, I guess the inference is, that the father would be
5 unwilling to say. So I understand exactly what you're saying,
6 but the idea that before the government could offer the
7 evidence that someone has to be on alert sort of turns it on
8 its head because it would mean that to testimony that someone
9 could impersonate somebody. But unless the people against
10 whom -- unless it was a bad job and failed, you couldn't offer
11 that evidence.

12 MS. REED: I think the issue that I'm having with
13 seeing it that way is the government hasn't presented any
14 testimony other than the government that says they think that
15 he's impersonating. The only piece of evidence that the
16 government has submitted is a telephone number that they allege
17 the defendant controls. That's it. That's their basis.

18 THE COURT: And why isn't that sufficient, and why
19 then doesn't it go to the weight? In other words, is there any
20 evidence that that phone was connected to the Calvin Darden,
21 Sr., any evidence in the record? Is the defense going to put
22 on any evidence that it was connected to senior?

23 MS. REED: Well, unfortunately Mr. Senior can't
24 testify, so there's that.

25 THE COURT: Have you pulled his telephone records?

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1 Did you know what his cell phone number was? Do you know what
2 his hard line was cause he's of a certain age that probably he
3 has a hard line.

4 MS. REED: I'll say this, your Honor. If Mr. Darden
5 had decided to take the stand or would decide to take the
6 stand, I'm confident that would come out. But for that, all
7 we're dealing with is a phone record, right, and the
8 government's theory that is based upon this prior conviction
9 from ten years ago. And with such a loose connection to any of
10 the facts that have actually come out, it's wildly prejudicial.
11 The jury will sit up here and hear for 15 minutes testimony
12 that is really focused on this theory of impersonation that
13 hasn't been fully developed by the government.

14 THE COURT: What would that look like? Because the
15 impersonation that came out in the --

16 MS. REED: -- the cooperation proffer.

17 THE COURT: In connection with that came from
18 Mr. Darden's mouth itself. Was there any other evidence in
19 that case that supported that he was impersonating someone?

20 MS. REED: We don't know.

21 THE COURT: So the very nature of the -- sort of the
22 clandestine nature of an impersonation, means that you're
23 probably not going to have direct evidence where someone is
24 caught necessarily redhanded. And so what you have is -- and I
25 guess you could argue that the actual -- and I don't remember

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1 all the connections, but that the phone numbers being connected
2 to Mr. Darden, Jr., that is direct evidence of those phone
3 numbers. And the government is going to argue the inference
4 since he used it before and that he was using it in this
5 context. In other words, my understanding is that for some of
6 the phones -- well, let me ask the government this question. I
7 just don't remember. Is it one phone that is exclusively used
8 in the impersonation and is not used by Mr. Darden, Jr. in
9 connection with other communications?

10 MR. MEAD: No. So there are two phone numbers, and he
11 uses both phone numbers for both purposes. So to Briscoe he
12 uses one phone number to impersonate, and one phone number as
13 himself, and then he flips it for BMO.

14 THE COURT: Go ahead, Ms. Reed.

15 MS. REED: I didn't hear testimony from anyone on the
16 stand that speaks to that. That is purely the government's
17 characterization of the use of telephone numbers. I also have
18 not heard from anyone on the stand that that was the way in
19 which this alleged fraud was carried out. It's been quite the
20 opposite. There's been testimony that directly, directly
21 alleges a mix allegation about Mr. Darden. There's been
22 nothing that focuses on that being the *Modus operandi* of how
23 this was carried out. It's certainly not even necessary. They
24 have put forth witnesses that have provided testimony that has
25 nothing to do with an allegation that he impersonated anyone to

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1 make their case a fraud. It's just piling on something that
2 hasn't been established in fact, will put him in a position
3 where he certainly will not have a fair trial. As soon as the
4 jury hears this very detailed testimony and this proffer about
5 him admitting to impersonating his father, there's amounts
6 provided, there's names, there's ways in which he has done
7 that, that is exactly the inference. That's the connection.
8 That will make that point for the government. They don't have
9 to put on any testimony or evidence other than that. It's
10 proving it. It's not showing intent. It's showing, yes, this
11 is what happened, connect that dot based on what happened ten
12 years ago that he took responsibility for, admitted and was
13 punished for.

14 THE COURT: Okay. First of all with regard to a fair
15 trial, I entirely disagree. I think Mr. Darden has gotten an
16 eminently fair trial. I think that knowledge and intent was
17 never taken off the table. Although Mr. Ricco opened in a way
18 that didn't inject knowledge and intent, there certainly was
19 cross-examination of various witnesses that at one point sort
20 of the argument could be made that Briscoe was doing this on
21 his own; that suggested that Howard is at fault because he
22 signed this agreement, that suggested that Darden, Sr. was
23 somehow involved in this. And so I think knowledge and intent
24 regardless of what the argument is going to be in summation has
25 clearly been put in play.

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1 With regard to *Modus operandi*, the issue is, using
2 someone's name who has credibility in the private sphere and in
3 the public, that was done in the pitch book and continued
4 throughout. So the pitch book has a big picture of Darden, Sr.
5 It's got his whole bio. The entity that was created was
6 created around Darden, Sr., all to get the Dream. And so the
7 reason I think the argument would be is that there was
8 impersonation is because the use of that name was integral to
9 the fraud into making it work and for Mr. Howard to be on
10 board, for the WNBA to be on board at least in part.

11 So I think that for those reasons -- and I had
12 previously outlined sort of the underlying law with regard to
13 404(b), and I would adopt what I had previously said. But here
14 as I indicated, knowledge and intent have not been taken off
15 the table; and if anything are squarely before the jury even if
16 there's no argument to that effect, there's cross-examination
17 with regard to that. The evidence that the government has put
18 forth with regard to the telephone numbers I believe is
19 sufficient for the government to argue the inference. The
20 telephone numbers that are used based upon the text appear to
21 be Mr. Darden, Jr. at certain points and Mr. Darden, Sr. at
22 other points. From the text it's fairly clear because at one
23 point there's a reference to a stroke, and at another point
24 it's reference to son. So I think that that is sufficient for
25 the government to make the argument. And I don't believe that

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1 it has to be, as I indicated earlier, that any witness has to
2 testify that they suspected what was going on. Had
3 Mr. Schmidt -- I imagine that if anyone thought that there was
4 someone impersonating someone else in connection with the deal,
5 Mr. Schmidt said that he would have gone internally to the
6 lawyer. So I'm going to allow the government to admit the
7 judgment. As I understand it, because I'm not sure if there's
8 been communication or whatever the redactions are, and we can
9 talk about that in a moment, as well as the testimony from the
10 prior trial on the issues of knowledge, intent, lack of mistake
11 and *Modus operandi* among other things. Thank you.

12 Obviously in making my comments that the defense is
13 free to argue sort of counter-inferences that there's
14 information that Darden, Sr. was clearly involved in certain
15 ways. There was video calls and things like that. And to
16 suggest that, no, it was in fact Darden, Sr. who was on those
17 calls. Obviously my ruling I'm not at all precluding any
18 arguments in that regard with regard to the defense. Any
19 questions with regard to that?

20 MS. REED: No, your Honor.

21 THE COURT: Thank you. Next I want to deal with the
22 issue related to the defense case. Because I think some of the
23 other things deal with the charge and can deal with that; in
24 other words, the promissory note issue. Let's talk about --
25 and Mr. Legon, I think you may be taking the lead on this.

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1 There are four issues referenced in the letter from Mr. Ricco
2 of earlier this morning. The first is that up to the year of
3 2020 to 2021 during the relevant time period of the crimes,
4 Dwight Howard had \$240, \$245 million in salary earnings from
5 his contract in the NBA. So my first question is how is that
6 relevant?

7 MR. LEGON: Your Honor, it goes to his wherewithal,
8 his financial wherewithal to have the ability to purchase the
9 Dream in the first instance, and it also goes to -- there was
10 testimony here about a big tax debt, a large tax debt, and we
11 think that showing that he had these immense earnings bolster
12 our argument that basically show that we can connect it up that
13 this is relevant because it really goes to his underlying
14 ability and what was really going on here which is going to be
15 part of the defense case. Also in terms of the numbers. I
16 think that it's important for the jury to understand who he is
17 and the amount of earnings that he had during his career.

18 THE COURT: Why is that latter part -- why is it
19 important for the jury to hear that, other than to perhaps
20 suggest to the jury, ah, you know, he earn so much money, why
21 is this a big deal?

22 MR. LEGON: That's not our argument, your Honor.

23 THE COURT: That doesn't necessarily have to be your
24 argument, but the suggestion is that you want the jury to know
25 who he is. I don't know what that means.

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1 MR. LEGON: We talked about net worth. And the bottom
2 line is that he answered questions in such a way that in both
3 direct and cross-examination that I think that the fact that he
4 has earned and signed all these multiple contracts that gave
5 him this wealth, essentially that it's relevant and it's also
6 relevant to the large tax bill he had. And was he really in
7 the position to have the financial wherewithal to purchase
8 this. How did it affect his decisions about how to go about
9 this transaction. There was testimony from Mr. Schmidt that
10 there were many different vehicles and many different ways, but
11 he chose the easiest way. And I think that his underlying
12 financial situation is very relevant to the testimony.

13 THE COURT: Let me ask, hasn't it already come in
14 through him that during his career, I think the testimony was,
15 that he's earned more than \$200 million?

16 MR. LEGON: No, your Honor. He didn't answer the
17 question.

18 THE COURT: All right. Well, I'll check that I guess.

19 MR. LEGON: He said he didn't know I believe.

20 THE COURT: Okay. So what exactly is the argument
21 that you intend to make? In other words, that he had the
22 financial wherewithal to purchase the Dream?

23 MR. LEGON: It completes the defense's narrative.
24 Essentially it completes the defense's narrative about what the
25 underlying circumstances are, what his intentions were and what

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1 was going on with this transaction and the purpose of this
2 transaction. I think it's for those particular reasons.

3 THE COURT: I'm just not really sure what that
4 narrative is. There was a question of Mr. Schmidt about the
5 tax liability and could he get the money back. This is when
6 the deal has basically started to go south if not already gone
7 south, could he get the money back. Is it possible to get it
8 back sooner rather than later because he had this tax bill.
9 That never happened. There's no testimony about what that tax
10 liability is, and it seems contra to suggest that he earns all
11 this money, but then he has this tax liability.

12 MR. LEGON: That's not the argument, your Honor. I'm
13 sorry, your Honor.

14 THE COURT: Please articulate what the argument is.

15 MR. LEGON: I think that the argument is that it
16 completes the defense's narrative.

17 THE COURT: Why don't we do this, take a moment. You
18 guys speak amongst each other, and then we can deal with this
19 issue and we'll come back to it.

20 MR. LEGON: Thank you, your Honor.

21 THE COURT: So now the next issue is the judgment in
22 the amount of 8.6 million and change and then the breakdown.
23 How is that relevant to the criminal charges here?

24 MR. LEGON: The judgment relates to the government's
25 theory that he paid in this money and he got nothing in return.

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1 He got nothing for his investment.

2 THE COURT: Has he collected any money? Has
3 Mr. Darden or the enterprise paid any money?

4 MR. LEGON: No, your Honor.

5 THE COURT: So what did he get?

6 MR. LEGON: He got a judgment.

7 THE COURT: Do you know how much he paid in legal fees
8 in order to get that judgment?

9 MR. LEGON: Yes, your Honor.

10 THE COURT: Go ahead.

11 MR. LEGON: There was a judgment for attorneys fees in
12 the amount of \$7,627.25 as part of the total judgment.

13 THE COURT: How is that that's something he got? In
14 other words, it's something he had to basically hire a lawyer
15 in order to sort of get that. So I'm not sure. How is that
16 relevant to the criminal charges and how is it relevant to a
17 defense?

18 MR. LEGON: It's a debt of the Darden Sports Group,
19 and he holds a judgment which he can pursue. He has the legal
20 ability to pursue this through collections and through the
21 courts to try to ascertain whether or not there's anything he
22 could collect, any value, any assets, and so that's the
23 argument there. It goes also to the narrative that he does
24 have something. He has a paper judgment, and he can do what he
25 has to do with that judgment in order to try to collect.

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1 THE COURT: But why is that relevant to this jury
2 about whether a crime was committed as opposed to relevant to
3 me if there's a conviction and then there's restitution or
4 something along those lines? In other words, why doesn't that
5 go to an aspect of punishment?

6 MR. LEGON: I think because it's inaccurate to make
7 the argument that he got nothing because he actually did get
8 something. He got a judgment and the ability to try and
9 collect. And whether or not he has made any attempts to
10 collect, that's not the issue. He has a paper judgment that's
11 legally enforceable.

12 THE COURT: How is that a defense?

13 MR. LEGON: It's not a defense. It's just part of a
14 narrative.

15 THE COURT: Well, I think the issue becomes I think
16 whether, as that narrative, whether there's -- well, I'll hear
17 from the government before I talk about the other issues. Is
18 there an issue with regard to the date of Mr. Darden's arrest
19 in this case?

20 MR. MEAD: There's not. It's actually already in the
21 record, your Honor. Mr. Cromer's testimony at page 325 of the
22 transcript, he identifies March 23, 2023, as the date that he
23 arrested Mr. Darden.

24 THE COURT: Is that sufficient?

25 MR. LEGON: Yes, your Honor.

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1 THE COURT: Now with regard to the bylaws it is just
2 Article 3, Mr. Legon, that will be referenced or are there
3 other portions?

4 MR. LEGON: Yes, just Article 3, your Honor.

5 THE COURT: And is that going to be through
6 Mr. Dershowitz?

7 MR. LEGON: Yes, your Honor.

8 THE COURT: Let me ask the government, is there an
9 objection to that portion of the constitution and bylaws
10 Article 3 coming in evidence?

11 MR. MEAD: There is, your Honor, a couple of issues.
12 One is, there's been testimony in this case about the WNBA
13 rules. There hasn't been any testimony about the NBA rules.
14 If they were trying to introduce the WNBA rules, it might be a
15 little bit different. But I'm not quite sure why the NBA rules
16 are relevant. They are proposing to introduce the wrong version
17 of the NBA rules. I only heard about this morning at four in
18 the morning. I found at least a 2019 version online. It
19 appears to be materially similar at to this point, but they
20 should introduce the right version. And I think they're also
21 misreading the documents.

22 The language talks about representatives of an owner.
23 Player is separately defined in that document. And, in fact, I
24 think two subsections earlier in the conflict of interest
25 section, there's a reference to player. And so the section

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1 that they're proposing to introduce doesn't actually govern NBA
2 players like Dwight Howard at all. I think it's also a little
3 bit -- I mean, Mr. Derskowitz is a lawyer, but he hasn't been
4 provided expert notice. I think the idea of having
5 Mr. Derskowitz interpret the NBA bylaws and what do they mean
6 doesn't make a lot of sense either. So for all those reasons,
7 your Honor, we don't think this should come in.

8 MR. RICCO: Judge, if I may. Judge, we're not looking
9 to introduce a section. It's like the complaint. We're really
10 just giving a heads up that there's going to be testimony about
11 these provisions that relate to the conflict. Several
12 witnesses have testified at this trial that there's a conflict,
13 and that conflict was communicated to Mr. Howard that he could
14 not purchase an WNBA contract directly or indirectly. And so
15 this is just provided -- not that we're going to introduce,
16 Judge, into the record a copy of this section; but there's
17 going to be questioning of Mr. Dershowitz about -- he's going
18 to testify about it. And what we want to get is, one person
19 said, for example, Mr. Schmidt said he's not allowed to have an
20 equity interest in a team. Mr. Dershowitz is going to testify
21 about, well, what precisely is it that he isn't allowed to do.
22 And are there rules and regulations in the NBA's bylaws and
23 constitution and tell us what those are. So that's what we're
24 doing. It's the same testimony that came out in the
25 government's case, it's just a little more accurate. So that's

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1 it.

2 THE COURT: I guess what I would say is, it sort of
3 depends upon what was communicated to the witnesses in
4 particular, what the individuals involved understood. While
5 you're absolutely correct there's been testimony about a
6 prohibition. It is unclear -- because I think my recollection
7 is the testimony was, well, initially they looked to the WNBA,
8 but the WNBA doesn't have exactly something on point, and so
9 they sort of looked to the NBA. And they sort of decided,
10 well, if you're an NBA player that you can't have an interest.
11 In any event, at least this provision that's been provided --
12 and I don't know what the player provision says, but it just
13 says that it has to be disclosed and it could be approved.

14 MR. RICCO: Yes, if it's one percent or less. Judge,
15 just to be clear, we're not looking to introduce any aspect of
16 the bylaws and constitution. What we are going to do is ask
17 Mr. Dershowitz the same questions that the government asked of
18 its witnesses. And that is, was this information communicated
19 to Mr. Howard; was it communicated to him or his agent by you?
20 And what is it that you were referring to? Can you tell us
21 what that is? What is that prohibition? That's it. Those
22 very same questions were asked of the government's witnesses
23 because it was relevant to that person's conduct. We just want
24 it to be accurate as to what it is.

25 THE COURT: Okay.

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1 MR. RICCO: Judge, I would just say this.

2 Mr. Dershowitz was one of the individuals that communicated
3 that.

4 THE COURT: There are several things going on here.
5 There's obviously Mr. Dershowitz was directly involved in the
6 communication with Mr. Howard or Mr. Briscoe or someone else,
7 and that information made it to Mr. Howard. Then, yeah, we'll
8 hear what he has to say about what exactly was communicated. I
9 don't know in the end of the day, and that's for the parties to
10 decide in their arguments. I think there's an argument to be
11 made on the one hand that the inference is that Darden, Briscoe
12 and Howard sort of devise this way to have Howard in the
13 background so that there could be this ownership interest.

14 So the first question is to the extent there's going
15 to be reference to constitution and the bylaws, we probably
16 need the one from that timeframe. So, Mr. Mead, if you have
17 that -- cause, again, I don't know what Mr. Dershowitz is going
18 to say. He may say, I don't know exactly what it was back in
19 2019. I remember having communication where I said X, Y or Z.
20 I just don't know whether we're going to need it or not. If I
21 could see the provision that describes player versus -- and
22 here it's owner or director, officer, manager, coach, agent
23 representative and owner. So I just want to see the player
24 part of it.

25 MR. DONALDSON: Your Honor, before you continue with

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1 that line of thought. My colleague is going to continue with
2 this point. I want to make sure Mr. Dershowitz is outside.
3 Can I check and see if he's out there?

4 THE COURT: That's fine. What I was planning on doing
5 is just to give you a sense is to do the government's two
6 witnesses. We still need to talk about the judgment, but do
7 the government's two witnesses, and that Mr. Dershowitz would
8 be -- we then have any motion or applications by the defense.
9 Argument with regard to that and I'd rule on it. And if we can
10 get Mr. Dershowitz after that in the morning before the lunch
11 break, that's fine.

12 MS. REED: I think that would be ideal. His counsel
13 here from the NBA has indicated that he's available this
14 morning. I think he has afternoon commitments. So if we could
15 get him in, I don't know if the government would agree.

16 THE COURT: I think if the jury is here, we can get
17 started. My sense of the testimony from the two witnesses that
18 the government has is going to be 20 minutes or something like
19 that?

20 MR. MEAD: More like half an hour total probably, but
21 we're totally with the defense. I think if we can get
22 Mr. Dershowitz in and done before lunch so the jury doesn't
23 have to stick around pass the lunch break that sounds great to
24 the government.

25 THE COURT: We can take him out of order. I don't

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1 know if that's what the parties are proposing.

2 MR. MEAD: Depending on when we start with the other
3 witnesses.

4 THE COURT: I would propose starting right away.

5 MR. MEAD: Correct. Of course, your Honor, after we
6 deal with a couple of other issues. That's half an hour. The
7 Rule 29 motion is I suspect less than half an hour. I think
8 they have said Mr. Dershowitz's direct examination is going to
9 be very brief. Our cross-examination maybe longer, not hugely
10 long. So I think all of that timeline, I think probably works
11 out before lunch, or maybe we push lunch 15 minutes or
12 something like that.

13 THE COURT: Okay. That's fine. All right. So let me
14 ask, what portion of the judgment -- have the parties reached
15 agreement as to what portions of the judgment are going to be
16 redacted?

17 MR. MEAD: We had a slight snafu last night, your
18 Honor. We pulled a version of the judgment off the docket when
19 we initially made the exhibit production. We then got a
20 certified copy, replaced the original judgment with that
21 document. It turns out that when we scanned in the certified
22 copy, we missed the kind of key page on supervised release. We
23 got a new certified copy this morning, which we have, and I
24 think we have a hard copy version of. We would propose -- and
25 I can kind of draw on the redactions right now and hand them to

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1 the defense and to the Court. We would propose to keep in the
2 stuff about the financial conditions requiring him to kind of
3 provide information. We'd also propose to keep in the
4 restitution amount which I think is about \$4 million. Our view
5 is, one, it explains why the probation department had these
6 conditions in part. Part of the reason is to ensure that if
7 the defendant has assets, he's paying his restitution judgment.
8 It also goes to show that the defendant had a debt. I think
9 there's some chance that the defendant's parents may have in
10 fact paid the debt. I'm not sure we're going to be able to
11 elicit that unless the defendant testifies, but there are
12 substantial payments to the defendant's mother with the fraud
13 proceeds that may in fact be repaying the restitution judgment.
14 For all those reasons, I think that the restitution judgment
15 does make sense to keep in. We apologize for not having
16 provided a copy to the defense, but we can do that very quickly
17 right now.

18 THE COURT: Specifically is the argument that with
19 regard to -- let me ask. Are any of the deposits made of the
20 monies that alleged from the, I'll say, the Howard fund, made
21 directly into a personal bank account of Mr. Darden, Jr.?

22 MR. MEAD: Our view, your Honor, is that the Legacy AC
23 account gets created I think in 2017 when the defendant is on
24 supervised release. That is the account. And Trevor Baldwin
25 is put as the only signatory on the account. Our argument is

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1 that the defendant controls that account. He received money
2 from Chandler Parsons into the account and from Dwight Howard
3 into that account. And one of our arguments is going to be
4 that the reason he put Trevor Baldwin on that account, the
5 reason he didn't want to be on it is because he wanted to hide
6 it potentially from the probation office because he was going
7 to receive fraud proceeds there. If it was his own account in
8 his own name, it would receive \$7 million from Dwight Howard,
9 \$1 million from Chandler Parsons, whatever it is, obviously
10 that's the kind of thing that a probation officer might look
11 at. We have a money laundering charge here. I think one of
12 the reasons he did this, he was concealing his ownership of the
13 account. This was one of his motives for concealing his
14 ownership of the Legacy AC account.

15 THE COURT: Yes.

16 MS. REED: I'm not seeing any link between the
17 restitution and the judgment and what Mr. Mead just explained.
18 It's just there's nothing in evidence to support that. That is
19 something that he's just -- it's an argument for how he's
20 interpreting.

21 THE COURT: Let's split out the two issues, at least
22 two issues. One is the conditions of reporting and the turning
23 over of information as part of the supervised release. So
24 that's one. The other is the restitution and the restitution
25 amount. So, Mr. Mead, let me hear from you. Why is the

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1 restitution -- I understand the argument with regard to the
2 disclosure and the desire to keep -- the argument that the
3 government would make to keep the payments under the radar
4 screen by creating different entities for the monies to flow
5 through. Putting aside the other possibility that it's just
6 more difficult to trace, but that it's more likely that the
7 probation if they asked, let's see your accounts in your name
8 that -- or if they got a subpoena that that would come to fore
9 that LLC wouldn't necessarily pop up Mr. Darden's name. What
10 about the restitution amount?

11 MR. MEAD: Look, your Honor, I think at the outset the
12 supervised release conditions are more important to the
13 government's theory than the restitution. As to the
14 restitution though. The restitution explains, one, why these
15 conditions exist, right. Like, one of the primary reasons that
16 the probation office has access to financial information is
17 because they see the defendant has a whole bunch of money, they
18 say, uh-huh, this is restitution money that you should be
19 paying. And one of the reasons the defendant may want to keep
20 his assets secret is to avoid paying that restitution payment
21 and instead buy his \$3.7 million house for example. It also
22 shows that the defendant has a debt that he may need to repay
23 in terms of the restitution judgment itself. We also have some
24 understanding unlikely to be able to show at trial absent the
25 defendant's testimony that the defendant's parents may have

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1 paid off some or all of this restitution judgment.

2 THE COURT: I saw something in the docket of the other
3 case that there was some discussion with prior counsel about a
4 civil, some sort of civil thing, and there was a discussion
5 about will that alleviate restitution or is the restitution
6 still valid. But I guess the question, is it relevant as to
7 what -- while I understand the argument the fact that there is
8 a restitution explain why there are these conditions. Although
9 the conditions could be standalone. The jury doesn't know one
10 way or the other the basis for that. Is it relevant as to what
11 the amount was? And secondly, was any of the money used here
12 to pay off any of that restitution?

13 MR. MEAD: This is the last question. Certainly not,
14 your Honor, of course kept account money, with the caveat that
15 money went to mom, maybe that was a repayment for something
16 else. I think my understanding is we often introduce evidence
17 as to kind of large preexisting debt as motivation for
18 defendants to commit these kind of frauds. I think it goes to
19 that as well.

20 THE COURT: Okay. All right. Ms. Reed.

21 MS. REED: I just think that it opens the door to
22 anything that the government could come up as to a connection
23 as to why the restitution is relevant. I just don't see that
24 meeting any standard of connection at all. This is again
25 within your Honor's purview as to restitution. I stand in our

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1 argument that it's not relevant and it's speculative that the
2 mom got the money and maybe was to hide it and to pay this.
3 I'm not seeing the relevancy.

4 THE COURT: Yeah, I guess what I would say, there are
5 two separate things. I think the conditions of supervised
6 release should come in, and they do relate to the money
7 laundering charges and relate to that; and the idea that there
8 may have been a reason why the personal bank accounts and other
9 things and why the money was funneled the way it was. And so
10 that I think will come in.

11 With regard to the restitution. I'm not so sanguine
12 about that. I understand that theory about the motivation, but
13 that's not the motivation here. I guess if there were
14 testimony that this was hanging over his head and he was very
15 concerned about having this and that some of the money was
16 funneled to do that to pay it off, that's one thing. So the
17 restitution should be redacted, but the other conditions can
18 come in. So you should, if you can mark up a judgment
19 indicating what stuff is going to be redacted, what stuff is
20 going to be in -- let me ask, does the judgment have
21 Mr. Darden's address at the top? In other words, is there
22 personal identifying information, and is any of it relevant?
23 It may not. It probably is the statement of reasons, yeah. So
24 it's not something that's part of the judgment that gets filed.

25 MR. MEAD: All I see is his name on it, your Honor.

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1 THE COURT: Okay. All right. So what I'd ask the
2 parties is to just take a look at that, and perhaps we can
3 start the initial witness. And then you can share with the
4 defense at this stage sort of the markup, and then create a
5 redacted version so that when Ms. Sebade testifies, everyone is
6 in agreement as to what comes in.

7 MR. MEAD: That makes sense to the government. There
8 are some issues with the defense case, but I think we can take
9 that up after the government's case.

10 THE COURT: You mean with regard to some of the
11 other -- that's fine.

12 MR. MEAD: The only issue with regard to the
13 government's case is there is still outstanding limiting
14 instruction that the Court will give when the transcript is
15 put in.

16 THE COURT: I don't think there's a material
17 difference between the two proposals that have been put forth.
18 The government's proposal is more closely to the language to
19 the jury instruction, so I intend to read the following before
20 the evidence comes in with regard to the prior fraud schemes.
21 It will be: You're about to hear evidence that the defendant
22 engaged in prior fraud schemes. The defendant is not on trial
23 for committing those acts. Accordingly, you may not consider
24 that the evidence of those prior fraud schemes as a substitute
25 for proof that the defendant committed the crimes with which he

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1 is charged here it, nor may you consider that evidence as proof
2 that the defendant has a criminal personality or bad character.
3 The evidence was admitted for limited purposes, and you may
4 consider it for those purposes alone. More specifically, you
5 may consider the evidence you have heard regarding the
6 defendant's prior fraud scheme as to the defendant's knowledge,
7 intent, identity, *Modus operandi* and absence of mistake.

8 And *Modus operandi* means -- hold on two seconds
9 because I actually went to Black Law dictionary because I think
10 it makes sense to have a definition for the jury. Hold on one
11 second. And *Modus operandi* means, method of operation for
12 doing things. And I pulled that off of Black Law dictionary
13 the 5th edition. I actually have the book. I don't know what
14 book they're up to now. I think most people look it up online.
15 That's what I intend to give. And that's a similar instruction
16 I will give to the jury in the jury charge. Okay. So I will
17 do that before that evidence comes in.

18 And then we can take up the other issue of the defense
19 case and round that out. Oh, I think we've discussed though,
20 with regard to Mr. Dershowitz, is there going to be any effort
21 to ask Mr. Dershowitz about any of Mr. Howard's judgment or how
22 much he earned or the like? I'm asking the defense.

23 MR. MEAD: We have several other Dershowitz related
24 issues. So if we're going to do Dershowitz stuff, we'd also
25 just ask --

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1 THE COURT: So why don't we do the government's
2 witness, and then we'll need to take a break and then I'll hear
3 from you on Mr. Dershowitz.

4 MR. RICCO: Your Honor, before we get started, can we
5 just take no more than a five-minute break.

6 THE COURT: Five minutes.

7 MR. RICCO: We'll just be right outside the door,
8 Judge.

9 THE COURT: I should mention before you go, so
10 Ms. Maringer, who I understand is counsel at the NBA, we were
11 in the U.S. Attorney's office together. In fact she was in the
12 unit that I supervised. That was a long time ago, and so I
13 don't -- I'm just informing the parties. I don't think there's
14 any issue, but I just wanted to the parties to know.

15 MR. RICCO: There's no issue, your Honor. We were
16 aware of that.

17 THE COURT: All right. Five minutes.

18 (Recess)

19 THE COURT: Just before we get the witness on the
20 stand, I'd like to allocute Mr. Darden on his right to testify.
21 Mr. Darden, I want to make sure that you understand that you do
22 not have to put on any evidence in this trial, because it is
23 the government's burden to prove you guilty of the charges
24 contained in the indictment beyond a reasonable doubt.

25 Do you understand that?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: However, you have the right to testify in
3 your defense if you so choose. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You also have the right not to testify.
6 Do you understand?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: In this regard, I will instruct the jury
9 that if you do not testify, they may not draw any inference of
10 guilt against you based upon your decision not to testify, and
11 the fact that you did not testify. And that fact may not enter
12 into their deliberations in any way. So I want to make sure
13 that you know the decision not to testify is yours. You are
14 obviously entitled to the best advice of your attorneys in
15 making that decision. But at the end of the day, it is your
16 decision to make. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Let me ask, Mr. Donaldson, Mr. Ricco,
19 Ms. Reed and Mr. Legon, have you discussed the issue of
20 Mr. Darden's decision whether or not to testify with
21 Mr. Darden?

22 MR. RICCO: Yes, your Honor.

23 THE COURT: And have you had enough time to discuss
24 this issue with him?

25 MR. RICCO: Yes, your Honor.

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1 THE COURT: Mr. Darden, have you had sufficient time
2 to discuss with your attorneys your decision concerning whether
3 or not to testify?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that that decision
6 whether to testify is entirely up to you?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: As you stand here today, do you intend to
9 testify?

10 THE DEFENDANT: I'm unsure at the moment, your Honor.

11 THE COURT: Now, you should know, and I think I
12 mentioned this yesterday -- you can sit down. You should know
13 that you can change your mind. In other words, you have up
14 until the time that your attorney indicate that they've
15 concluded the presentation of evidence on your behalf. In
16 other words, until your attorneys indicate that you rest your
17 case. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: So I'm going to ask you again at the
20 conclusion of the government's case, and I'm going to ask you
21 again after the other witnesses have testified whether you
22 intend to testify. Let me ask, if Mr. Darden does testify, are
23 there any exhibits that the defendant would offer through
24 Mr. Darden if he testifies?

25 MR. RICCO: No, Judge.

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1 THE COURT: All right. So let me ask just another --
2 I take it Mr. Slade is not testifying.

3 MR. DONALDSON: Judge, I don't think that's absolutely
4 accurate. I believe he was --

5 THE COURT: It's either he's testifying or he's not
6 testifying.

7 MR. DONALDSON: Yes, Judge, he is. He's scheduled to
8 be here tomorrow morning.

9 THE COURT: And with regard to Mr. Darden's sister, is
10 she testifying or not testifying?

11 MR. DONALDSON: She's not testifying.

12 THE COURT: And with regard to the gentleman who owns
13 the home improvement?

14 MR. DONALDSON: Mr. Paddock, he is not testifying, and
15 we have not been able to work out a stipulation. I have
16 discussed those matters with him. And what I thought he was
17 able to stipulate to, he cannot, so we will not be offering a
18 stipulation.

19 THE COURT: So as I understand the defense case will
20 be Mr. Dershowitz today?

21 MR. DONALDSON: That's correct.

22 THE COURT: Is the paralegal testifying?

23 MR. RICCO: Judge, it depends on the ruling that you
24 ultimately make with respect --

25 THE COURT: I'm sorry, what?

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1 MR. RICCO: Right now no. Right now the answer is no.

2 THE COURT: If you could use the microphone,

3 Mr. Ricco.

4 MR. RICCO: Forgive me.

5 THE COURT: It's unclear to me what ruling might be
6 outstanding that I need to make in order to assist you in
7 making the final decision with regard to that.

8 MR. RICCO: Judge, the paralegal was just going to
9 testify with respect to a timeline of events with like bullet
10 points in between. We don't need to do it. As we sit here
11 today now, we are not going to do it.

12 THE COURT: Okay.

13 MR. RICCO: Were that to change, we would rush to the
14 Court, rush to the government and let them know. As of right
15 now, he's not going to testify.

16 THE COURT: Okay. I just want to be clear, I'm not in
17 anything I said precluding you from doing it. It's entirely up
18 to you. If it's something that you think you need it in order
19 to put in front of the jury, or are it may be things already in
20 evidence that you can use on argument or to create a
21 demonstrative.

22 MR. RICCO: Judge, I appreciate what you're saying.
23 We certainly understand that, but we also are very interested
24 in moving forward in a responsible way in accomplishing what we
25 want to accomplish. We know we have no time restriction. I'm

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1 not trying to imply that. I'm just being very clear with the
2 Court. On the defense side, we just don't do what we don't
3 need, so we've come to that conclusion. We're ready to move
4 on.

5 THE COURT: Fantastic. Okay. Let me ask in terms of
6 the government, is it Ms. Brewer first?

7 MR. KINDER: Ms. Brewer first, your Honor.

8 THE COURT: Can we get the jury. We're going to get
9 the jury.

10 (Continued on next page)

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Brewer- Direct

1 (Jury present)

2 THE COURT: Ladies and gentlemen, I'm sorry for the
3 delay. However, it doesn't alter what I said yesterday. We're
4 still on track. You're going to get the case at some point
5 this week. We're going to continue with the government's case.
6 The government's next witness.

7 MR. KINDER: The government calls Rosalind Brewer.

8 THE COURT: Ms. Brewer, if you could step on up. My
9 deputy clerk Ms. Disla is going to administer the oath.

10 ROSALIND BREWER,

11 called as a witness by the Government,

12 having been duly sworn, testified as follows:

13 THE COURT: You may have a seat. Make yourself
14 comfortable. I ask if you could state your name and spell it
15 for the record.16 THE WITNESS: Rosalind Gates Brewer; Rosalind,
17 R-O-S-A-L-I-N-D; Gates G-A-T-E-S, Brewer, B-R-E-W-E-R.

18 THE COURT: You may inquire.

19 DIRECT EXAMINATION

20 BY MR. KINDER:

21 Q. Good morning, Ms. Brewer.

22 A. Good morning.

23 Q. Can you please describe your educational background?

24 A. I have a BS degree in chemistry from Spellman College, and
25 I have attended the advance management program at the Wharton

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Brewer- Direct

1 School of Business.

2 Q. Can you please describe your work history?

3 A. I joined Kimberly-Clark upon my graduation from Spellman
4 College as a research scientist, and I worked as a research
5 scientist for about five years. And then the company promoted
6 me to mergers and acquisitions position, so I moved over to the
7 business side of Kimberly-Clark.

8 Q. What is Kimberly-Clark?

9 A. Kimberly-Clark is a personal care company that sells
10 Huggies, diapers and Kleenex tissues as an example.

11 Q. How long did you work at Kimberly-Clark?

12 A. I was there for 22 years.

13 Q. And what other roles did you hold that you haven't yet
14 described?

15 A. I also worked in manufacturing operations for
16 Kimberly-Clark, and I managed their global operations for
17 diapers, feminine care products and health care products around
18 the world, so I manage manufacturing and operations in the U.S.
19 and around the world.

20 Q. What other companies have you worked for after
21 Kimberly-Clark?

22 A. I left Kimberly-Clark and I joined Walmart stores. I was
23 with Walmart stores for ten years. I started off in store
24 operations in the Southeast, and then I was made CEO of Sam's
25 Club while I was with the Walmart company.

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Brewer- Direct

1 Q. Is Sam's Club apart of Walmart?

2 A. Sam's Club is a division of Walmart stores.

3 Q. How long were you CEO of Sam's Club of Walmart?

4 A. Five years.

5 Q. What did you do after that?

6 A. I left Walmart and I joined the board of Starbucks coffee
7 company, and then I became a chief operating officer for
8 Starbucks coffee company.

9 Q. What years did you work at Starbucks?

10 A. I worked at Starbucks from 2017 to 2021.

11 Q. And what did you do after Starbucks?

12 A. I left Starbucks to join Walgreens, and I was a CEO of
13 Walgreens from March of '21 until August 31, '23.

14 Q. Are you working now?

15 A. I am working now.

16 Q. What are you doing?

17 A. I'm on the board of United Airlines, and I'm on the board
18 of Kipps School K through 12 charter program.

19 Q. Other than your work for the United Airlines board and the
20 Kipps school board, have you had other board service in your
21 career?

22 A. Yes, I have. I was on the board of Molson Coors Brewing
23 company, and then I joined the Lockheed Martin defense company
24 board. I was on the board of Amazon. And when I was made the
25 CEO of Walgreens, I was actually a board member as well as CEO

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Brewer- Direct

1 of the company.

2 Q. Have you served on the board of any educational
3 institutions?

4 A. Yes, I have. I was the chairman of the board of Spellman
5 College my alma mater for 12 years, but I served on the board
6 for 17, 12 of those as chair.

7 MR. KINDER: Can we please publish what's in evidence
8 as Government Exhibit 2144A, please. Mr. Ross, can you scroll
9 through the first few pages of this document.

10 Q. Ms. Brewer, before preparing for your testimony in this
11 case, have you ever seen this document?

12 A. No, I have not.

13 MR. KINDER: Can we go to page two, please.

14 Q. The first sentence of text on this page reads: Darden
15 Sports Group, DSG, led by prominent Atlanta businessman, Cal
16 Darden, Sr., is proud to have an opportunity to become the next
17 owner of the WNBA's Atlanta Dream.

18 Before preparing for your testimony in this case,
19 Ms. Brewer, had you ever heard of the Darden Sports Group?

20 A. No.

21 Q. Do you know a person named Calvin Darden, Sr.?

22 A. Yes.

23 Q. Who is he?

24 A. Calvin Darden, Sr., was a friend of mine that worked for
25 United Parcel Service in Atlanta. He was also on the board of

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Brewer- Direct

1 Target Corporation and helped me decide on my career. He was a
2 mentor to me.

3 Q. When did you first meet him?

4 A. In the early 2000s.

5 Q. And how did that meeting occur?

6 A. That meeting occurred, I reached out to Mr. Darden and
7 introduced myself to him. He was on the board of Target
8 Stores, and I was contemplating leaving Kimberly-Clark and
9 joining Walmart, and I needed the advice from him.

10 Q. When was the last time you saw Cal Darden, Sr.?

11 A. At least 12 years ago.

12 Q. And when was the last time you communicated with Cal
13 Darden, Sr.?

14 A. At least 12 years ago.

15 Q. Have you changed your personal phone number or email or
16 address since you last communicated with Cal Darden, Sr.?

17 A. I have not.

18 Q. So if he wanted to get in touch with you during the last 12
19 years, he would have been able to do that?

20 MR. DONALDSON: Objection, form of the question.

21 THE COURT: If you could rephrase the question. Well,
22 prior to 12 years ago, did Mr. Darden, Sr., did he have your
23 contact information?

24 THE WITNESS: Yes, he did.

25 THE COURT: And does that include your telephone

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Brewer- Direct

1 number?

2 THE WITNESS: Yes.

3 THE COURT: Your email address?

4 THE WITNESS: Yes.

5 THE COURT: Does that include a work email address, do
6 you remember?7 THE WITNESS: I don't recall because of the change in
8 my jobs.

9 THE COURT: But did he have your personal email?

10 THE WITNESS: Yes, he did.

11 THE COURT: Okay. Next question.

12 MR. KINDER: Can we please go to page four, please.

13 THE COURT: Had you communicated with him prior to 12
14 years ago using your email address and your phone and the like?

15 THE WITNESS: Correct.

16 THE COURT: And did you have his telephone number in
17 your phone as part of your contact for him if you remember?

18 THE WITNESS: Yes.

19 THE COURT: Do you still have, do you know?

20 THE WITNESS: I don't know that I still have that.

21 THE COURT: I know.

22 Ladies and gentlemen, I still have a iPhone 6S. Yeah,
23 I know. I'm sure everybody else has moved on from there. I'm
24 sorry. Go ahead.

25 BY MR. KINDER:

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Brewer- Direct

1 Q. Ms. Brewer, who is depicted on the screen now?

2 A. Calvin Darden, Sr.

3 Q. Did Calvin Darden, Sr., ever communicate with you about the
4 Darden Sports Group?

5 A. No.

6 Q. Did he ever communicate with you about the Atlanta Dream?

7 A. No.

8 Q. Did you ever hear about Calvin Darden, Sr., attempting to
9 purchase the Atlanta Dream?

10 A. No.

11 MR. KINDER: Can we go to page eight, please.

12 Q. The title of this page is advisory board. I'll read the
13 text. Darden Sports Group has assembled a world-class advisory
14 board comprised of super-star leaders within the areas of
15 music, television, film, professional sports, business and
16 community. Each board member has committed to using their
17 ideas, voices, platforms, resources, relationships and
18 influence to support the Atlanta Dream and its various
19 initiatives.

20 Ms. Brewer, do you see yourself pictured on this page?

21 A. Yes.

22 Q. Where is that on the page?

23 A. The left column second photograph.

24 MR. KINDER: Can we zoom in on that photograph,
25 please.

1 OA1BDAR1

Brewer- Direct

2 Q. Do you recognize this particular photo of yourself?

3 A. I do.

4 Q. What is it?

5 A. It was my headshot when I became chief operating officer
for Starbucks.

6 Q. Is it a photograph that's publicly available?

7 A. Yes, it is.

8 MR. KINDER: If we can zoom out there.

9 Q. Ms. Brewer, did you ever agree to be a member of an
10 advisory board for the Darden Sports Group?

11 A. No, I did not.

12 (Continued on next page)

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1 OA1JDAR2

Brewer - Direct

1 BY MR. KINDER:

2 Q Did you ever authorize your name to be used in this
3 document?

4 A No, I have not.

5 Q Did you ever authorize your photograph to be used in this
6 document?

7 A No, I did not.

8 Q When you were working at Starbucks, was anyone else who
9 worked with you authorized to agree on your behalf for you to
10 be a member of an advisory board for Darden Sports Group?

11 A No.

12 Q Or for your photograph to be used in this document?

13 A No.

14 THE COURT: Let me ask, Ms. Brewer, was there a
15 process that you have to go through at Starbucks in order to be
16 a member of an advisory board?

17 THE WITNESS: Yes, sir. In my capacity at Starbucks,
18 I'm a Section 16, which is a Securities and Exchange Commission
19 officer. Because of that, any outside organizations must be
20 approved by the board of directors of that company.

21 THE COURT: Okay. All right. I'm sorry. Go ahead.

22 BY MR. KINDER:

23 Q Did you ever go through that process with respect to the
24 Darden Sports Group?

25 A I did not.

OA1JDAR2

Brewer - Direct

1 Q Page 18, please.

2 The title of this page is corporate affiliations. And
3 Ms. Brewer, you see there are a number of corporate logos at
4 the bottom of the screen?

5 A Yes.

6 Q And the text just before that reads "DSG's corporate
7 partners include," and do you see the Starbucks logo?

8 A Yes.

9 Q Where is that located on the page?

10 A Left-hand side, bottom corner.

11 Q Ms. Brewer, I believe you said you worked at Starbucks from
12 2017 to 2021; is that right?

13 A Correct.

14 Q In 2020, what was your position at Starbucks?

15 A Chief operating officer.

16 Q Can you describe for the jury what your responsibilities
17 generally were as chief operating officer?

18 A I reported to the chief executive officer of the company.
19 I ran operations for all stores globally. I managed
20 innovation, beverage development, resourcing, supply chain,
21 marketing, talent, and legal.

22 Q Who are the people at Starbucks who would have been
23 involved in evaluating corporate partnerships like the one
24 described on this page.

25 A There's a marketing organization that would set up

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Brewer - Direct

1 relationships like this.

2 Q And once the marketing organization set up relationships
3 like this, what would happen next?

4 A Depending on the size of the spend, it would come to my
5 office for approval.

6 Q While you were working at Starbucks, did Starbucks ever
7 enter a corporate partnership with the Darden Sports Group?

8 A Not to my knowledge.

9 Q While you were working at Starbucks, were you ever informed
10 about a proposed partnership with the Darden Sports Group?

11 A No.

12 Q I'm going to read the second sentence of the third
13 paragraph.

14 DSG's corporate partners understand the value of
15 women's sports and are committed to investing in and across the
16 Dream's various platforms and properties immediately upon the
17 closing of DSG's proposed acquisition.

18 Ms. Brewer, while you were working at Starbucks, did
19 the company commit to investing in and across the Dream's
20 various platforms and properties?

21 A Not to my knowledge.

22 Q In your position at Starbucks, is that a commitment you
23 would have known about?

24 A I likely would have known about this.

25 Q Page 26, please.

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Brewer - Direct

1 The heading on this page is We Dream TV. I'm going to
2 read the first sentence. The Atlanta Dream platform will be
3 enhanced by a new network of concepts We Dream TV.

4 Now can we go to page 27, please.

5 The last piece of text above the logos on the bottom
6 of the screen reads key sponsors for We Dream TV include, and
7 then do you see the Starbucks logo?

8 A Yes, I do.

9 Q While you were working at Starbucks, did Starbucks ever
10 sponsor We Dream TV?

11 A No.

12 Q Were you ever informed about a proposed sponsorship by
13 Starbucks of We Dream TV?

14 A No.

15 Q Before preparing for your testimony in this case, had you
16 ever heard of We Dream TV?

17 A Never.

18 Q Can we please publish 2119A in evidence. And let's scroll
19 through a few of the pages.

20 Ms. Brewer, before preparing for your testimony in
21 this case, had you ever seen this document?

22 A No.

23 Q We can take that down.

24 Ms. Brewer, do you know of a person named Charles
25 Briscoe?

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Brewer - Direct

1 A No.

2 Q Have you ever met a person named Charles Briscoe?

3 A No.

4 Q Have you ever spoken to a person named Charles Briscoe?

5 A No.

6 Q Do you know of a person named Calvin Darden, Jr.?

7 A No.

8 Q Have you ever met Calvin Darden, Jr.?

9 A No.

10 Q Have you ever communicated with Calvin Darden, Jr. about
11 the Darden Sports Group?

12 A No.

13 Q Have you ever communicated with Calvin Darden, Jr. about
14 the Atlanta Dream?

15 A No.

16 Q Have you ever communicated with Calvin Darden, Jr. about
17 anything?

18 A No.

19 MR. KINDER: One moment, your Honor.

20 THE COURT: Yes.

21 MR. KINDER: No further questions.

22 THE COURT: Okay. Cross-examination?

23 MR. DONALDSON: No, Judge. Thank you.

24 THE COURT: Okay. Thank you, Ms. Brewer. You may
25 step down.

OA1JDAR2

Brewer - Direct

1 (Witness excused)

2 THE COURT: Okay. Government's next witness?

3 MR. MEAD: The government offers into evidence,
4 pursuant to the certification at 2000-Z, the following
5 exhibits, 2106, 2111, 2112, 2147, 2502, and 2509.

6 THE COURT: Any objection?

7 MR. RICCO: No, your Honor. That's without objection.

8 THE COURT: Okay. So Government Exhibits 2106, 2111,
9 2112, 2147, 2502, and 2509 are admitted in evidence.10 (Government's Exhibit 2106, 2111, 2112, 2147, 2502,
11 2509 received in evidence)

12 THE COURT: Okay. The government's next witness?

13 MR. KINDER: The government calls Olivia Sebade.

14 THE COURT: Okay. Thank you.

15 OLIVIA SEBADE, recalled.

16 THE COURT: Before we begin with the direct
17 examination, ladies and gentlemen, you are about to hear
18 evidence that the defendant engaged in prior fraud schemes.
19 The defendant is not on trial for committing those acts.
20 Accordingly, you may not consider that evidence of those prior
21 fraud schemes as a substitute for proof that the defendant
22 committed the crimes with which he is charged here. Nor may
23 you consider that evidence as proof that the defendant has a
24 criminal personality or bad character.

25 The evidence will be admitted for a limited purpose,

OA1JDAR2

Sebade - Direct

1 and you may consider it for those purposes alone. More
2 specifically, you may consider the evidence you are about to
3 hear regarding the defendant's prior fraud schemes as relevant
4 to the defendant's knowledge, intent, identity, *modus operandi*
5 and the absence of mistake. *Modus operandi* means method of
6 operation or doing things. Okay.

7 All right. You may proceed.

8 DIRECT EXAMINATION

9 BY MR. KINDER:

10 Q Ms. Sebade, before we look at some documents can you just
11 remind everyone where you work.

12 A The U.S. Attorney's Office in the Southern District of
13 New York.

14 Q What's your title?

15 A Paralegal.

16 Q And what are your responsibilities?

17 A I help the lawyers in my office with administrative tasks.

18 MR. KINDER: At this point, the government offers into
19 evidence Government Exhibits 1001 and 1002, self-authenticating
20 documents, pursuant to the certifications on those documents.

21 THE COURT: Okay. Any objection?

22 MR. RICCO: None other than that that have been
23 previously raised.

24 THE COURT: 1001 and 1002 are admitted in evidence
25 subject to objection, which we had previously dealt with. So

OA1JDAR2

Sebade - Direct

1 the objections are reserved. You may proceed.

2 (Government's Exhibit 1001 and 1002 received in
3 evidence)

4 MR. KINDER: Mr. Ross, can you please publish
5 Government Exhibit 1002. Scroll down just ever so slightly.
6 Back up to the very top.

7 Q Ms. Sebade, you see there's a large heading, United States
8 District Court. Underneath is Southern District of New York?

9 A Yes.

10 Q Can you read the case caption that appears below that to
11 the left?

12 A *United States of America v. Calvin R. Darden Jr.*

13 Q And on the right there's the bold heading "judgment in a
14 criminal case." Can you read the case number that appears
15 below that.

16 A S1 14 CR 534-01 (JSR).

17 Q Slightly below that, on the left side of the page, can you
18 please read the two lines of text that begin "the defendant."

19 A Pleaded guilty to counts one, two, three.

20 Q Scroll down a little bit more. A little bit more please.

21 You see the text in the middle of the page that's now
22 sort of near the top of the screen "the defendant is
23 adjudicated"?

24 A Yes.

25 Q Can you read that along with the three rows that appear

OA1JDAR2

Sebade - Direct

1 under title and section, nature of offense, offense ended, and
2 count.

3 A The defendant is adjudicated guilty of these offenses:

4 Title and section, 18 U.S.C. Section 1343; nature of offense,
5 wire fraud; offense ended, February 28, 2014; count one. Title
6 and section, 18 U.S.C. Section 1343; nature of offense, wire
7 fraud; offense ended, February 11, 2014; Count Two. Section --

8 MR. RICCO: Your Honor, I hate to interrupt, but can
9 we have just a brief sidebar?

10 THE COURT: Okay.

11 (Continued on next page)

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OA1JDAR2

Sebade - Direct

1 (At sidebar)

2 MR. RICCO: Sorry for the interruption, Judge.

3 They're getting ready to read stuff about sentencing, and the
4 jury's going to hear stuff about sentencing. And I'm sorry to
5 do this in this way, but it just occurs to me that there has to
6 be a serious cautioning about jurors getting information about
7 sentencing.8 THE COURT: Well, let me ask, though, is the sentence
9 itself redacted?

10 MR. KINDER: It is.

11 THE COURT: Okay. I have no problem with basically a
12 curative instruction that, as I previously told them, that the
13 issue of punishment is not their --

14 MR. RICCO: That's fine, Judge.

15 THE COURT: -- not their issue, and I will repeat that
16 again.17 MR. RICCO: Also, Judge - and Ms. Reed reminds me is
18 that the transcript also speaks of amounts of restitution.19 MR. KINDER: I think it speaks about amounts of loss
20 that related to fraud, not in terms of restitution.

21 MR. RICCO: All right. Okay. Sorry about that.

22 MR. KINDER: Just to be clear, my plan was when we get
23 to the second page, which was imprisonment, I was going to have
24 her read the heading imprisonment and sentence is redacted.

25 THE COURT: Why is that relevant?

OA1JDAR2

Sebade - Direct

1 MR. KINDER: I want to orient them in the document.

2 THE COURT: That's okay. The document is in evidence.

3 There's no need to draw attention to -- and there will be both
4 an instruction on redactions and an instruction with regard to
5 punishment. Once you're done with the document, I'll turn to
6 the jury and say, ladies and gentlemen, this document also
7 should not be considered with regard to any punishment one way
8 or the other.

9 MR. RICCO: Judge, there has been a lot of reading of
10 stuff in evidence, and we haven't objected to it, but I'm
11 troubled by the imprisonment and sentencing. There's no reason
12 for that witness to be reading that.

13 THE COURT: And there won't be. I think that there's
14 no need to orient them to that part of the document.

15 MR. KINDER: Very good.

16 MR. RICCO: Thank you, Judge.

17 (Continued on next page)

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OA1JDAR2

Sebade - Direct

1 (In open court; jurors present)

2 BY MR. KINDER:

3 Q Ms. Sebade, picking up where we left off, can you please
4 begin reading the second row that appears under the defendant
5 is adjudicated guilty of these offenses.6 A Title and section, 18 U.S.C. Section 1343; nature of
7 offense, wire fraud; offense ended, February 11, 2014; Count
8 Two. Title and section, 18 U.S.C. Section 1343; nature of
9 offense, wire fraud; offense ended, February 11, 2014; Count
10 Three.

11 Q Scroll down a little bit.

12 Ms. Sebade, do you see the line for date of imposition
13 of judgment?

14 A Yes.

15 Q What is the date?

16 A July 18, 2016.

17 Q And can you read the name and title of judge that appears
18 below that.

19 A Honorable Jed S. Rakoff, USDJ.

20 Q Please go to page 3.

21 The heading of this page reads supervised release.
22 Can you please read the first two lines of text underneath
23 that.24 A Upon release from imprisonment, the defendant shall be on
25 supervised release for a term of, on counts one, two, and

OA1JDAR2

Sebade - Direct

1 three, three years to run concurrent.

2 Q And can you please read the sentence that appears below
3 that.

4 A The defendant must report to the probation office and the
5 district to which the defendant is released within 72 hours of
6 release from the custody of the bureau of prisons.

7 Q Can we go to page 4, please.

8 The heading of this page is special conditions of
9 supervision. Can you please read numbers one and two that
10 appear on this page?

11 A The defendant shall provide the probation officer with
12 access to any requested financial information. The defendant
13 shall not incur any new credit charges or open additional lines
14 of credit with the approval of the probation officer unless the
15 defendant is in compliance with the installment payment plan.

16 MR. KINDER: Okay. We can take that down and let's
17 publish Government Exhibit 1001 in evidence.

18 THE COURT: So ladies and gentlemen, this is just to
19 remind you, I think I mentioned this in my opening remarks that
20 the issue of punishment is none of your concern. That is
21 something that I would deal with. So the issue of punishment
22 is none of your concern, and the document that was just
23 admitted in evidence that there was just testimony about should
24 not be considered by you in connection with any punishment that
25 may be imposed in this case. Okay? All right. Go ahead.

OA1JDAR2

Sebade - Direct

1 BY MR. KINDER:

2 Q Ms. Sebade, can you please read the case caption that
3 appears at the top of this page of Government Exhibit 1001.

4 A *United States of America v. Harvey Newkirk*, defendant.

5 Q What is the case number that appears on the right?

6 A 14 CR 534 (JSR).

7 Q And what is the location and date that appear below that?

8 A New York, New York, November 24, 2015.

9 Q And who is the judge that is identified in the middle of
10 the page?

11 A Honorable Jed S. Rakoff, district judge.

12 MR. KINDER: Can you go to page 2, please. And I
13 should say page 2 here corresponds to page 835 of the
14 transcript in the upper right hand corner.

15 Ms. Sebade, I am going to read the text of the
16 individuals who are not the witness in this document, and I'd
17 ask that you please read answers to questions from the witness.
18 We'll start just with this first page, line 9. (Reading)

19 "MR. ADAMS: Thank you. Your Honor, the government
20 calls Calvin Ramarro Darden.

21 "CALVIN RAMARRO DARREN,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 "THE DEPUTY CLERK: Please be seated. State your name
25 and spell it slowly for the record.

OA1JDAR2

"Darden"

"THE WITNESS: It's Calvin Ramarro Darden,
C-a-l-v-i-n, Ramarro, R-a-m-a-r-r-o, Darden, D-a-r-d-e-n.

"MR. ADAMS: Your Honor, may I?

"THE COURT: Counsel.

"DIRECT EXAMINATION

"BY MR. ADAMS:

"Q Good morning, Mr. Darden.

"A Good morning.

"Q How old are you?

"A 41."

MR. KINDER: Can we please go to page 12, which is page 941 in the transcript. Beginning at line 16, Ms. Sebade, I will read the questions, you please read the answers.

14 (Reading)

"Q Mr. Darden, approximately when did you plead guilty in connection with the Maxim fraud?

17 "A I believe it was February 13, 2014.

"Q I direct you to the first page of this document where it refers to a professional basketball exhibition game in Taiwan.

20 "A Yes.

"Q Can you briefly describe the crime that you pled to in that count.

23 "A Sure. I was negotiating with a gentleman in Taiwan about
24 bringing a basketball game or having a professional basketball
25 game in Taiwan, and I got him to basically send the money up

OA1JDAR2

"Darden"

1 from before the game had occurred, if that is sufficient.

2 "Q Did you impersonate your father in connection with that?

3 "A I did.

4 "Q And in addition to that exhibition of the basketball game,
5 did you also take part in an attempt to organize a business
6 venture relating to the National Basketball Association?

7 "A Yes, I did.

8 "Q Did you impersonate your father in connection with that
9 venture?

10 "A I did.

11 "Q Did you successful close any deal in connection with that
12 venture?

13 "A I did not.

14 "Q Are those the only lies that you admitted to in your
15 conversations with the government?

16 "A They are not."

17 MR. KINDER: Page 14, please, which is page 944 of the
18 transcript. Line 7. (Reading)

19 "Q You just told the jury that in addition to the lies you
20 talked about right now, there were other lies that you told the
21 government about?

22 "A Yes, ma'am.

23 "Q In fact, there were lots of other lies you told as part of
24 this fraud, correct?

25 "A I don't know about lots, but I told them, yes.

OA1JDAR2

"Darden"

1 MR. KINDER: Page 18, please, which is page 1015 in
2 the transcript, line 2. (Reading)

3 "Q All the lies that you told since you got out of jail for
4 the frauds you've been committing have also been for money,
5 right?

6 "A That's correct."

7 MR. KINDER: Page 3, please, which is page 838 of the
8 transcript, line 10. (Reading)

9 "Q In general, what was the purpose of your introduction to
10 Mr. Newkirk?

11 "A Oh, we were talking about a potential boxing match between
12 Floyd Mayweather and Manny Pacquiao.

13 "Q What was the name of the business under which you were
14 operating at that time?

15 "A The Reign Entertainment Group LLC.

16 "Q Who controls Reign Entertainment Group?

17 "A I did. I did.

18 "Q I'll just refer to it as Reign going forward. Has your
19 father ever held any formal position at Reign?

20 "A No, he hasn't."

21 MR. KINDER: Page 4, please. (Reading)

22 "Q Has your father ever discussed with you the possibility of
23 holding an informal position at Reign?

24 "A Yes, he has.

25 "Q Can you describe what that position was.

OA1JDAR2

"Darden"

1 "A So, in the event that one of the deals closed, you know,
2 that I was going after I had spoken to him about, then he would
3 consider coming on as chairman or in some sort of advisory
4 capacity.

5 "Q What financing, if any, has your father ever provided for
6 Reign's different business ventures?

7 "A None.

8 "Q And what kind of nonfinancial assistance has your father
9 provided to Reign?

10 "A I would say a lot, you know, so any -- he would provide me
11 with advice or manage -- anything kind of in his warehouse. He
12 was a manager for a lot of years, so managerial advice, things
13 like that.

14 "Q Has your father participated in meetings involving Reign's
15 business?

16 "A He has.

17 "Q Has he participated on telephone calls involving Reign's
18 business?

19 "A He has.

20 "Q For what purpose would your father join in those telephone
21 calls or meetings?

22 "A Really to provide credibility to whatever it is that we
23 were talking about at the time.

24 "Q Have you ever used your father's name on contracts
25 associated with Reign's business?

OA1JDAR2

"Darden"

1 "A I have.

2 "Q Was that with or without his authorization?

3 "A That was without.

4 "Q Was that with or without his knowledge?

5 "A Without."

6 MR. KINDER: Page 6, please, which is page 850 of the
7 transcript, line 3. (Reading)8 "Q Mr. Darden, in 2011, what was your primary telephone
9 number?

10 "A (347) 850-5686.

11 "Q Was that still your primary phone number in February of
12 2014?

13 "A Yes, sir.

14 "Q Can we please publish Government Exhibit 902 in evidence,
15 page 2. Mr. Darden do you recognize the number (404) 227-4067?

16 "A I do.

17 "Q What is?

18 "A That is another telephone number that I had.

19 "Q And did you also use that number in 2013 and 2014?

20 "A I did.

21 "Q Can we please go to page 1 of the same exhibit. The
22 address listed here, Mr. Darden, the Father Capodanno
23 Boulevard, whose address was that?

24 "A That was my address at the time.

25 "Q Have you ever impersonated your father using the 4067

OA1JDAR2

"Darden"

1 number?

2 "A I have."

3 MR. KINDER: Next page, please. This is page 7 of the
4 exhibit, page 864 of the transcript, line 12. (Reading)

5 "Q Did your father participate in any way in discussions
6 or meetings regarding Maxim Magazine?

7 "A He did.

8 "Q What were the purpose of those discussions in meetings?

9 "A Again, initially was to gain credibility. We also had,
10 you know, meetings with the people -- the managers of Maxim."

11 MR. KINDER: Line 21. (Reading)

12 "Q Mr. Darden, did your father also participate in the
13 telephone calls regarding Maxim Magazine?

14 "A Yes, he did."

15 MR. KINDER: Page 8, please, page 866 of the
16 transcript, line 7. (Reading)

17 "Q What role, if any, had you asked your father to play at
18 Maxim in the event that your purchase was successful?

19 "A I asked him to be the chairman.

20 "Q Prior to the purchase of Maxim, what role, if any, did
21 your father have with respect to the attempted purchase?

22 "A He didn't. Well, he had an advisory capacity."

23 MR. KINDER: Page 9, please, which is page 899 of the
24 transcript, line 21. (Reading)

25 "Q Did you have any discussions with Mr. Newkirk regarding

OA1JDAR2

"Darden"

1 the conversation you had with Comvest as yourself?

2 "A I did.

3 "Q Can you describe that conversation.

4 "Q Yes, he told me that they weren't comfortable with me in
5 the deal and that it had to be -- in order for them to move
6 forward, it had to be my father.

7 "Q Following the signing of the letter of intent, did you
8 have another conversation over the phone with Comvest
9 representatives?

10 "A I did.

11 "Q And at that time, did you speak as yourself or as your
12 father?

13 "A As my father.

14 "Q And why did you do that?

15 "A Because they had just said that they didn't want me
16 involved in the deal and that they wanted my father to speak or
17 they wanted, you know, my father on the phone.

18 "Q Who else was on the call that you were talking to?

19 "A The Comvest individuals, the broker that brought us to
20 Comvest, Harvey. There were several people on that call.

21 "Q And during that telephone call, did you alter your voice
22 in any way?

23 "A I didn't.

24 "Q Was that the only time during the Maxim deal that you
25 impersonated your father on phone?

OA1JDAR2

"Darden"

1 "A It was not.

2 "Q To whom else did you impersonate your father over the
3 phone?

4 "A A gentleman named Shaul Greenwald or Shaul. I'm not sure
5 how to pronounce it.

6 "Q Is Mr. Greenwald the only other person you did that to?

7 "A No, he's the one that comes to mind right now, though.

8 MR. KINDER: Page 19, please, which is page 1045 of
9 the transcript, line 6. (Reading)

10 "Q I want to talk to you about the basketball fraud that you
11 pled guilty to in connection with your testimony today.

12 "A Okay.

13 "Q Isn't it a fact that at the same time that you were
14 running this Maxim fraud you were also running your basketball
15 fraud?

16 "A I believe the basketball thing was before, but it could
17 very well be at the same time. It sounds about right.

18 "Q And in the NBA fraud -- is it okay if I call it the NBA
19 fraud?

20 "A Of course.

21 "Q You were impersonating your father, right?

22 "A I was."

23 MR. KINDER: Line 20. (Reading)

24 "Q You were calling people and pretending to be your father?

25 "A The NBA fraud, at times probably.

OA1JDAR2

"Darden"

1 "Q That's the guy in Taiwan, Melvin, correct?

2 "A Yes, ma'am."

3 MR. KINDER: Next page, please, which is 1046 of the
4 transcript, page 20 of this government exhibit, Line 5.

5 "Q You testified that this was all done without the knowledge
6 of your father, right?

7 "A That -- I testified that what exactly was done without the
8 knowledge of my father?

9 "Q Impersonating him.

10 "A Yes, that was done without his knowledge."

11 MR. KINDER: Page 21, please, which is page 1146 of
12 the transcript, line 2. (Reading)

13 "Q Mr. Darden, last week you testified about a 404 phone
14 number that you had so you could pretend to be your father,
15 correct?

16 "A Yes.

17 "Q 404 is the area code for Atlanta?

18 "A It is.

19 "Q You were not living in Atlanta?

20 "A I was not.

21 "Q You opened this phone number and this account in May of
22 2013, correct?

23 "A I did.

24 "Q And you did it so that you could call people and pretend
25 to be your father, correct?

OA1JDAR2

"Darden"

1 "A Correct.

2 "Q You did, in fact, use this phone number and pretend to be
3 your father, correct?

4 "A Yes, ma'am."

5 MR. KINDER: Page 22, please, which is 1156 of the
6 transcript, line 13. (Reading)7 "Q After that meeting, you called Mr. Greenwald pretending to
8 be your father, right?

9 "A I did.

10 "Q And you lied to him on that deal because you were
11 pretending to be your father, right?

12 "A I did.

13 "Q You testified that you used your real voice, right?

14 "A I did.

15 "Q That you didn't bother changing it?

16 "A I did not.

17 "Q That's the same voice you are using right now?

18 "A That's correct.

19 "Q The same intonation you are using right now?

20 "A Same intonation. I probably spoke slower, right, made
21 maybe a point not to use any slang or young slang. Intonation,
22 I mean, I'm not certain.

23 "Q You didn't deepen your voice did you?

24 "A Deepen my voice, no.

25 "Q Did you use the same voice tone that you're using with the

OA1JDAR2

Sebade - Cross

1 jury right now?

2 "A I would say for the most part.

3 "Q And you agree that you were lying to Shaul Greenwald on
4 the phone?

5 "A I was."

6 MR. KINDER: Line 23. (Reading)

7 "Q From the NBA deal, which was a fraud, you took \$500,000
8 from this person Melvin, right?

9 "A Yes.

10 "Q And you also took \$175,000 from Richard Lauck, right?

11 "A Yes."

12 MR. KINDER: Take that down. No further questions.

13 THE COURT: Okay. Cross-examination?

14 MR. RICCO: Yes, Judge.

15 CROSS-EXAMINATION

16 BY MR. RICCO:

17 Q Good morning.

18 A Good morning.

19 Q Can we put the exhibit -- let's first start with 1002,
20 page 1.21 Okay. So in this exhibit we see a judgment in a
22 criminal case, right?

23 A Yes.

24 Q And the defendant there is Calvin R. Darden Jr., right?

25 A Yes.

OA1JDAR2

Sebade - Cross

1 Q And what the exhibit shows is that he pleaded guilty to
2 three counts, right?

3 A Yes.

4 Q And that box is checked, so it's not that he was found
5 guilty after a trial, anything like that. The box that's
6 checked is that he pleaded guilty to those counts, correct?

7 A That's correct.

8 Q And that was *United States v. Calvin Darden, Jr.*, right?

9 A Yes.

10 Q Okay. Can we put up 1001, please. First page.

11 Now, you read from a transcript, a trial. And that
12 was a proceeding involving a person, according to the document,
13 of Harvey Newkirk, correct?

14 A Yes.

15 Q Can we go to the very next page. All right.

16 And you read from the transcript about many times in
17 which Mr. Darden admitted to impersonating, correct?

18 A Yes.

19 Q Lying, right?

20 A Yes.

21 Q Being involved with frauds?

22 A Yes.

23 Q Involved in the NBA, right?

24 A Yes.

25 Q Kind of doing things that his father didn't know about,

OA1JDAR2

Sebade - Cross

1 right?

2 A Yes.

3 Q And this was a case where -- this is a transcript where
4 Mr. Darden is called as a government witness, correct?

5 A Yes.

6 Q And we see that right in front of us, right?

7 A Yes.

8 Q And before he gives his testimony, he has to put his hand
9 up and swear that what he testifies to is the truth, right?

10 A Yes.

11 Q And that happens?

12 A Yes.

13 Q And having sworn to tell the truth under oath, Mr. Darden
14 gave truthful answers -- well, withdrawn.

15 Mr. Darden gave answers in connection with his
16 testimony, having been called as a government witness in that
17 other criminal case, correct?

18 A Yes.

19 Q And so as you're reading to us the statements, the things
20 about lying and impersonating and taking, he's doing that under
21 oath, right?

22 A Yes.

23 Q And he's doing that as a witness that's called by the
24 United States Government, correct?

25 A That's correct.

OA1JDAR2

Sebade - Cross

1 MR. RICCO: No further questions. Thank you.

2 THE COURT: Any redirect?

3 MR. KINDER: No, Judge.

4 THE COURT: Okay. Just to be clear, Ms. Sebade,
5 you're just reading the transcript, right?

6 THE WITNESS: Yes, that's correct.

7 THE COURT: You had no personal knowledge of the
8 underlying facts in that case?

9 THE WITNESS: That's correct.

10 THE COURT: Okay. All right. Thank you very much.
11 You may step down.

12 (Witness excused)

13 THE COURT: Okay. The government's next witness.

14 MR. MEAD: Your Honor, the government rests.

15 THE COURT: Okay. All right. So ladies and
16 gentlemen, the government has rested its case. You don't have
17 the case yet, all right? There's still more to come, but we're
18 going to take a break right now and then pick up with the
19 remainder of the trial. All right.

20 Remember do not discuss the case. Again, you don't
21 have the case yet. Go back, relax, and we'll come and get you
22 when we're ready for the next phase of the case. You can leave
23 your pads on your chair or you can take them back with you.
24 Thank you.

25 (Continued on next page)

OA1JDAR2

1 (In open court; jury not present)

2 THE COURT: Okay. You may be seated. All right.

3 Now, as I indicated, I was going to revisit the issue with
4 Mr. Darden of his right to testify after the government rested
5 its case.

6 So Mr. Darden, let me ask -- and with those prior
7 questions I asked you in mind, as you stand here today, do you
8 intend on testifying?

9 THE DEFENDANT: I'm unsure, your Honor. But I guess
10 the question -- actually, the question is for my attorneys.

11 THE COURT: Yes. So why don't you take -- we're going
12 to take -- should we do the argument? You can be seated
13 Mr. Darden.

14 Okay. Mr. Ricco, do you have an application?

15 MR. RICCO: I do, Judge. And my application is
16 pursuant to Rule 29, and we are requesting a motion for
17 judgment of acquittal under five counts, each of the five
18 counts, on the grounds that the government has not presented
19 sufficient evidence to -- that's sufficient to sustain a
20 conviction under Counts One, under Counts Two, Count Three,
21 Four, or Five. And I rest on the evidence that has been
22 presented in connection with that.

23 And hold on, Mr. Donaldson has something he wanted to
24 say.

25 And your Honor, with respect to those counts, the

OA1JDAR2

1 elements that we believe are insufficient are those that go to
2 knowledge and intent.

3 THE COURT: Okay. I understand. I appreciate that.
4 Let me hear from the government.

5 MR. THOMPSON: Thank you, your Honor.

6 There has been ample and abundant evidence making
7 clear that the government has put forth sufficient evidence for
8 a jury to find the defendant guilty on all five counts.

9 Throughout the course of this trial, you've seen text
10 and emails between the defendant and his co-conspirator setting
11 forth the specific steps and documents that were sent to both
12 of the key victims, Chandler Parsons and Dwight Howard.

13 Specifically there was discussion about promissory
14 notes to be paid to Chandler Parsons to extract a million
15 dollars from him. You heard extensive testimony about the
16 vision plan. You saw documents from the defendant, to the
17 defendant with the vision plan that was eventually sent to
18 Dwight Howard and employees at BMO that was all part of the
19 fraud to extract \$7 million from Dwight Howard.

20 You heard testimony about the lies that were in that
21 vision plan. You heard testimony from Issa Rae. You heard
22 testimony from Rosalind Brewer. You heard testimony from
23 representatives of Tyler Perry Studios and Aflac all saying
24 that they did not know — and Jennifer Baltimore — excuse me,
25 your Honor.

OA1JDAR2

1 All of those witnesses said that at no point did they
2 agree to be on this advisory board associated with the Darden
3 Sports Group. The majority of those witnesses also said they
4 had no knowledge of who Calvin Darden, Jr. was. You heard that
5 each of those lies is material. You heard that Dwight Howard
6 said that after he saw this vision plan, he was even more
7 inclined to purchase the Dream, and he thought that this group
8 was the one to make it happen for him.

9 You heard testimony from John Brock indicating that
10 after he saw this vision plan and, in particular, the
11 individuals on the advisory board, the corporate sponsors, his
12 view that this was a group that could be successful if they
13 acquired the team. And you also heard testimony from
14 Mr. Schmidt, the banker at BMO N.A. who said he found the
15 vision plan impressive.

16 Your Honor also saw extensive evidence and heard
17 testimony about the financials in this case. You saw that the
18 money from Mr. Parsons or at least over half of it went to
19 Legacy AC LLC. You saw that the money from Mr. Howard, both of
20 the two wires, went to Legacy AC LLC. Your Honor saw documents
21 making clear that while Trevor Baldwin, a co-conspirator, was a
22 name on the account, the account was under the defendant's
23 control.

24 There were documents that listed Legacy AC LLC
25 associated with two of the defendant's addresses, his address

OA1JDAR2

1 in Atlanta and his previous address in Staten Island. You also
2 saw that after the defendant received these fraud proceeds to
3 Legacy AC LLC, he laundered it through at least six accounts
4 under his control or otherwise in his name. And he also sent
5 proceeds of those frauds to his co-conspirators, to Mr. Baldwin
6 and to Mr. Briscoe.

7 So your Honor, the evidence has been certainly
8 sufficient for a jury to find the defendant guilty.

9 THE COURT: Okay. I think at this stage, the evidence
10 presented is more than ample for this case to go to the jury
11 for the reasons the government mentioned. I mean, there have
12 been emails, texts, and testimony about Mr. Howard's desire to
13 be an owner of a WNBA team. There are texts and emails and the
14 like between he and Mr. Briscoe and Mr. Darden, Jr. and
15 Mr. Briscoe and Mr. Darden, Jr. and Mr. Howard.

16 In addition, as indicated, the vision plan was I
17 believe a creation that Mr. Darden provided to Mr. Briscoe and
18 to Mr. Howard. That vision plan -- I believe, there's going to
19 be testimony from the defense, it sounds as if Mr. Slade may
20 have participated in sort of putting that together as a
21 logistical matter, but the inference is that the words, the
22 representations in that document were those made and were --
23 the inferences that were provided basically by Mr. Darden, Jr.

24 There's no evidence in the record that anybody on the
25 advisory board gave permission for the utilization of their

OA1JDAR2

1 name or likeness in connection with that. In fact, there's
2 strong evidence to the opposite. Certain of those folks would
3 have had to go through various approvals and other things in
4 order to have their name utilized in that way. There's also no
5 evidence that - I'll say "corporate sponsors" were actually
6 legitimately included in that document.

7 So that document was utilized to entice - the argument
8 would be to entice Mr. Howard, Mr. Brock, Mr. Schmidt, and
9 others that this was a deal that was heavily supported in a way
10 that - I think Mr. Brock testified in a way that was sort of
11 unique in terms the sort of the WNBA team. So I think there's
12 more than ample evidence of that.

13 And similarly, with regard to Chandler Parsons, there
14 are emails and texts and other things, but on the back end,
15 putting aside this -- well, Mr. Howard got nothing, all right,
16 Mr. Parsons got nothing, other than the loss of the \$7 million,
17 again, based upon the evidence that has come in.

18 In fact, the letter of intent was 3 million and
19 3.5 million. There's no evidence in the record that I'm aware
20 of that the Darden Group or any other iteration involved in the
21 Darden Group ever offered \$7 million for the WNBA team, the
22 Dream. That price was paid apparently by another group. And
23 there's no evidence that any of the money was utilized in
24 connection with what was contained in the promissory note,
25 right?

OA1JDAR2

1 \$7 million came in. I think the testimony or the
2 evidence indicated that five-point-whatever was spent on
3 various things that were largely personal in nature and not
4 business related.

5 So I think there's ample evidence, so I'm going to
6 deny the motion under Rule 29 with leave to revisit the issue
7 after the defense case.

8 Any questions with regard to the ruling?

9 MR. DONALDSON: No, your Honor.

10 THE COURT: Okay. All right. So let's talk about
11 Mr. Dershowitz. Are there certain issues that we need to
12 resolve before he takes the witness stand?

13 MR. THOMPSON: Your Honor, there's one matter from the
14 government's perspective. Yesterday afternoon I sent an email
15 intended for the trial team. I copied two of my trial
16 colleagues, and instead of adding the third, I accidentally
17 included Mr. Dershowitz.

18 That email had five bullet points of just general
19 topics I intended to or the government intended to inquire of
20 Mr. Dershowitz if he testified. One of my colleagues brought
21 this to my attention about 18 minutes after I had sent it. I
22 replied to all and said this was an error, please disregard. I
23 then called Mr. Dershowitz's lawyer and explained what happened
24 and asked her to call him and instruct him not to look at that
25 email.

OA1JDAR2

1 My understanding is that he did open the email and did
2 read it. But my understanding is also that his lawyer told him
3 to delete it and disregard it.

4 THE COURT: Okay. All right. Did you advise the
5 defense of this issue even if you may not have advised them
6 of -- even if you hadn't provided them with the email?

7 MR. THOMPSON: This is the first I'm bringing it to
8 the Court and the defense's attention.

9 THE COURT: Okay. All right. I don't know what the
10 defense reaction is one way or the other. Yes?

11 MR. DONALDSON: Judge, my only two questions is we
12 haven't seen it, so I'd like to see those -- whatever was
13 inadvertently provided to Mr. Dershowitz. We'd like to see it
14 first so I can comment on it, but I would like to see whatever
15 Mr. Dershowitz has seen and opened up prior to us doing any
16 direct of him or them doing any cross of him. So I think we
17 should start there.

18 THE COURT: Yes.

19 MR. THOMPSON: Your Honor, this is work product, so of
20 course happy to furnish a copy to the Court.

21 THE COURT: Okay. Just give me a moment.

22 MR. THOMPSON: And --

23 THE COURT: This is the email, the followup email that
24 says this was sent in error, please disregard.

25 MR. THOMPSON: That's right, your Honor.

OA1JDAR2

1 THE COURT: Okay. So I understand that it's work
2 product, but it was shared. So work product is a little bit
3 different than privilege, but it was shared with a third party,
4 albeit inadvertently, and so I think in order also for me, in
5 terms of the management of the testimony, for me to hear from
6 the defense -- I mean, look, ordinarily, obviously I wouldn't
7 know what your potential cross-examination is. But my
8 understanding is that there's 3500 material for Mr. Dershowitz;
9 is that correct?

10 MR. THOMPSON: That's right, your Honor.

11 THE COURT: And I take it that in some way, shape, or
12 form, these bullet points were formulated based upon -- well, I
13 don't need to ask that.

14 So I guess I would say that you should provide it to
15 the defense so I can hear argument about what, if anything,
16 they intend to do so that I can basically rule on that. So if
17 you could provide a copy of the email.

18 And who is doing the cross-examination of
19 Mr. Dershowitz?

20 MR. DONALDSON: Direct.

21 THE COURT: Direct examination, yes.

22 MR. DONALDSON: I am.

23 THE COURT: So I'll give you a few moments to look at
24 that.

25 MR. RICCO: Judge, it's fine.

OA1JDAR2

1 THE COURT: Okay. Well, when you say it's fine --

2 MR. RICCO: I mean to say that we accept the
3 government's representation and just looking at it amongst
4 counsel without trying to study it or anything, we've been
5 informed of that. That does not affect us in any way. We
6 don't think that anything was done improper here.

7 THE COURT: Let me ask sort of the -- I'm sorry. Go
8 ahead, finish.

9 MR. RICCO: It seems like the points are from the 3500
10 material, Judge.

11 THE COURT: But let me ask is there any intention to
12 basically say to the witness, did you receive an email last
13 night from the government?

14 MR. RICCO: No, Judge.

15 THE COURT: Okay. All right. Yes?

16 MR. THOMPSON: Nothing, your Honor.

17 THE COURT: Okay. All right. So is there anything
18 else we need to take up with regard to Mr. Dershowitz or with
19 regard to -- are there any other witnesses here today for the
20 defense or would Mr. Dershowitz be it today?

21 MR. DONALDSON: No, your Honor, that will be it.

22 THE COURT: Yes?

23 MR. MEAD: Two points, your Honor. One is I don't
24 think the Court had necessarily made a final determination as
25 to the points in Mr. Ricco's letter. I'm not sure what they're

OA1JDAR2

1 planning to do with Mr. Dershowitz, but I assume the NBA bylaws
2 is at least within the universe of things.

3 THE COURT: Well, let me ask, other than the bylaws,
4 which I'll make a ruling on right now, were any of the other
5 points raised in Mr. Ricco's letter of earlier this morning
6 things that were raised with Mr. Dershowitz?

7 MR. RICCO: No, your Honor.

8 THE COURT: Okay. So with regard to the bylaws,
9 there's already been testimony about whether or not Mr. Howard
10 could own a WNBA team. Mr. Dershowitz has personal
11 knowledge -- it sounds as if Mr. Dershowitz has personal
12 knowledge concerning what was communicated either to
13 Mr. Howard, either directly or indirectly, through Mr. Briscoe.
14 I don't specifically know. So obviously he'll be permitted to
15 testify about that and what the basis of whatever comments he
16 may have relayed that indicated -- and again, I'm just assuming
17 this is going to be part of the testimony -- that indicated that
18 Mr. Howard could not own or whatever the parameters were
19 concerning the limitations, if any, concerning NBA players and
20 Mr. Howard in particular not being able to own a WNBA team.

21 To the extent there is explicit reference to the
22 constitution or bylaws or to particular articles, we should use
23 the one that was in place at the time. I don't know whether
24 the witness can testify about exactly what the language was
25 back then. It may be that that is not going to be an issue.

OA1JDAR2

1 But I will allow him to testify based upon his position at the
2 NBA concerning what his -- right, he's at the NBA?

3 MR. RICCO: Yes, Judge.

4 THE COURT: What his communications were, either with
5 Mr. Howard or whomever -- I just don't remember if they were
6 directly with Mr. Howard or Mr. Howard through Mr. Briscoe or
7 through Mr. Brock. I just don't remember. So if he was -- he
8 can obviously testify about that and what the underlying basis
9 for his comments were.

10 MR. DONALDSON: Right.

11 THE COURT: Okay.

12 MR. DONALDSON: Thank you.

13 THE COURT: Is there anything else before we bring
14 Mr. Dershowitz?

15 MR. MEAD: So two things, your Honor, one is
16 Mr. Donaldson also sent us a list of emails he plans to
17 introduce I think in the defense case generally. I'm not sure
18 if any of those are through Mr. Dershowitz or separate from
19 Mr. Dershowitz.

20 MR. DONALDSON: I can take care of those during the
21 witness, but those that the government is objecting to, I'll
22 set the proper foundation. If the government objects to it,
23 then that's fine.

24 THE COURT: Let me ask are these emails that
25 Mr. Dershowitz was on?

OA1JDAR2

1 MR. DONALDSON: Yes.

2 THE COURT: Okay. And so what was the nature of the
3 objections? In other words, assuming the foundation is laid,
4 what is -- in other words, this is his email address and he
5 received emails and -- but what's the objection?

6 MR. MEAD: There's no authenticity objections. These
7 are all documents that have been authenticated through a
8 certification and, in fact, were on the Government's Exhibit
9 list, but not introduced. The objection is generally hearsay.

10 Most of them are email chains with multiple emails in
11 them. I think there are emails involving the defendant, emails
12 from the defendant, emails from Mr. Briscoe. I don't recall
13 exactly what's in all of them. But obviously statements by
14 Mr. Briscoe are admissible when we introduce them as
15 co-conspirator statements. Emails from Mr. Darden, Jr. are
16 admissible when we introduce them as statements from the
17 defendant. They're not admissible generally because they're
18 hearsay when they're attempted to be introduced by the defense.

19 THE COURT: All right. So let me hear from the
20 defense with regard to what is in the hearsay objection in
21 particular, the basis for their admission.

22 MR. DONALDSON: I think the basis for most of them
23 will be state of mind, your Honor. They go directly to
24 Mr. Dershowitz's state of mind of what he did when he got the
25 emails.

OA1JDAR2

1 THE COURT: So they're not being admitted for the
2 truth?

3 MR. DONALDSON: That's correct.

4 THE COURT: They're just solely being admitted to show
5 Mr. Dershowitz's state of mind?

6 MR. DONALDSON: That's correct.

7 THE COURT: And the impact of the emails on him.

8 MR. DONALDSON: That is correct, your Honor.

9 THE COURT: Okay. All right. Mr. Mead?

10 MR. MEAD: Mr. Dershowitz's state of mind is generally
11 not super relevant in this case. And obviously there's a
12 concern that the jury looks at an email from the defendant and,
13 despite whatever instruction, takes it for the truth. If it
14 was about the state of mind of the defendants, I would be more
15 sympathetic, but Mr. Dershowitz, his state of mind just isn't
16 that significant here.

17 THE COURT: State of mind with regard to what though?
18 With regard to, in other words, why he took certain actions
19 that he did?

20 MR. DONALDSON: That is exactly correct, your Honor.
21 It relates to certain actions that he took, why he took them,
22 why he jumped on certain Zoom calls, why he made certain
23 decisions about what he told to Mr. Howard, Mr. Brock, etc. So
24 those state of minds are important to those emails.

25 THE COURT: Okay. So I'll allow them for the purpose

OA1JDAR2

1 of showing state of mind. I'll instruct the jury -- are they
2 marked as an exhibit?

3 MR. DONALDSON: They are marked as government
4 exhibits. They are government exhibits in the 2100 section.

5 THE COURT: Okay. So over the government's objection,
6 I'll allow the documents in, but not for their truth. They're
7 being admitted for the purpose of showing their impact on Mr.
8 Dershowitz, specifically on his state of mind. Be forewarned,
9 if there's any argument that I think crosses the line in terms
10 of summations suggesting that in some way the statements in the
11 emails should be read for their truth --

12 MR. DONALDSON: I understand, Judge.

13 THE COURT: I may *sua sponte* cut you off.

14 MR. DONALDSON: I understand, Judge.

15 THE COURT: Or I wouldn't cut you off. What I would
16 say is I would interject and say, ladies and gentlemen you may
17 recall that the exhibit that is being discussed was not
18 admitted for their truth, but only for its impact on
19 Mr. Dershowitz's state of mind.

20 MR. DONALDSON: Very good.

21 MR. MEAD: Last thing. How long is the -- I think
22 there's a good chance we can finish Mr. Dershowitz, and it
23 might require us to push 15 minutes further. I wanted to get a
24 sense of timing on the direct.

25 MR. DONALDSON: About 30 minutes.

OA1JDAR2

1 THE COURT: Okay. All right. So I can talk about the
2 lineup tomorrow in terms of defense witnesses, and specifically
3 I'm going to ask how much time will those witnesses take just
4 because some of these jurors are traveling a fair amount of
5 time, and to have them travel more time than there will be
6 testimony is something I'd like to try and avoid. But it
7 sounds like we're going to have Mr. Slade --

8 MR. DONALDSON: Mr. Sienko.

9 THE COURT: -- and Mr. Sienko tomorrow. So they're
10 still on?

11 MR. DONALDSON: Yes.

12 THE COURT: All right. And Mr. Slade will be here in
13 the morning and -- Mr. Sienko and Mr. Slade will be here in the
14 morning?

15 MR. DONALDSON: Yes.

16 THE COURT: Okay. All right. So what I will tell the
17 jury is that -- so why don't we come back in ten minutes, and I
18 will let the jury know that we want to complete the witness,
19 and so we may go a little bit over into their lunch break. And
20 this is for the parties, I'd like to tell them that once that
21 witness is done, we're going to break for the day and they're
22 free to go.

23 MR. DONALDSON: Very good.

24 MR. RICCO: Yes, Judge.

25 THE COURT: Is there anything else we need to do

OA1JDAR2

1 before we take our break?

2 MR. RICCO: No, your Honor.

3 MR. MEAD: No, your Honor.

4 THE COURT: Okay. If the parties have suggested
5 language for a curative instruction with regard to -- I mean, I
6 could do it off the cuff, but basically the exhibit that has
7 been received in evidence is not being admitted for the truth.
8 But if there's anything the parties would like me to mention in
9 that regard, certainly for the charge, we should focus on --
10 since there has been other evidence that's come in, we should
11 think about whether to specify exactly what that was during the
12 trial. But I can just handle it in terms of right now. All
13 right?

14 MR. RICCO: That's fine, Judge. Thank you.

15 THE COURT: Okay. Thank you very much. I'll see you
16 in ten minutes.

17 (Recess)

18 (Continued on next page)

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1 OA1BDAR3

2 THE COURT: Let me ask, first, is there anything that
3 we need to take up prior to the jury coming out?

4 MR. DONALDSON: Yes. On Exhibit 2301 that defense ask
5 to be admitted, the Court granted that request over the
6 government's objection. I am withdrawing that. I did misspeak
7 to that specific exhibit. That one did not go directly to
8 Mr. Dershowitz' email, so I wanted to correct that. We're
going to withdraw that if that's possible.

9 THE COURT: Okay. I don't remember. So, I'm sorry.
10 Are there other exhibits?

11 MR. DONALDSON: The other exhibits that we spoke about
12 before the break, we had the argument, those were admitted. I
13 said that all those emails went directly to Mr. Dershowitz.
14 I'm telling the Court now I was incorrect about one of those,
15 that was 2301, and I wanted to withdraw that request for
16 admission for that particular exhibit.

17 THE COURT: That's fine. If you don't offer it,
18 obviously that's fine. So let me ask, anything else with
19 regard to Mr. Dershowitz?

20 MR. DONALDSON: Not from the defense.

21 THE COURT: Mr. Slade and Mr. Sienko, how long is
22 there testimony going to be tomorrow?

23 MR. DONALDSON: I anticipate Mr. Slade being between
24 20 and 30 minutes.

25 MS. REED: Maybe 30 minutes, 45 minutes.

1 OA1BDAR3

2 MR. DONALDSON: 30, 45 minutes. And Mr. Sienko, back
3 end of it, 30, 45 minutes.

4 THE COURT: All right. Look, in an ideal world I
5 would not necessarily have the jury come in for that. Let me
6 just say, that testimony is the defense. Well, I'm going to
7 ask at the end of this session after Mr. Dershowitz testifies,
8 I'm going to inquire of -- well, I'll wait until tomorrow
9 morning, but unless you're telling me that the testimony of
10 Sienko and -- well, I'll wait until tomorrow morning to inquire
again of Mr. Darden with regard to his testifying.

11 MR. DONALDSON: Very good. Thank you.

12 THE COURT: All right. Okay. Shall we get
13 Mr. Dershowitz. So what I intend to tell the jury is that
14 we're going to be able to break early. We might go a little
15 bit longer past 12:45. But once we're done with
16 Mr. Dershowitz, we're going to break for the day. Is there any
17 objection to that?

18 MR. DONALDSON: No, your Honor.

19 THE COURT: Let's get the jury.

20 (Continued on next page)

153 OA1BDAR3

1 (Jury present)

2 THE COURT: Thank you for your patience, ladies and
 3 gentlemen. There were certain issues that I needed to take up
 4 with the lawyers. We're going to begin the defense case now.
 5 Now that means we're going to go a little bit into the lunch
 6 time. But once we're done with this witness, I'm going to
 7 release you for the day, and we're going to come back tomorrow
 8 at 10 o'clock for additional testimony, additional parts of the
 9 defense case. And we'll complete that testimony. I anticipate
 10 that you will have the case at some point on Thursday. Okay.
 11 All right. The defense's first witness.

12 MR. DONALDSON: Defense calls Mr. Dershowitz to the
 13 stand.

14 THE COURT: Mr. Dershowitz, step up, please. My
 15 deputy clerk Ms. Disla will administer the oath.

16 JAMIN DERSHOWITZ,

17 called as a witness by the Defendant,
 18 having been duly sworn, testified as follows:

19 THE COURT: If you could have a seat. Make yourself
 20 comfortable. I just ask that you state your name and spell it
 21 for the record.

22 THE WITNESS: Jamin Dershowitz, J-A-M-I-N,
 23 D-E-R-S-H-O-W-I-T-Z.

24 THE COURT: You may inquire.

25 MR. DONALDSON: Thank you, your Honor.

OA1BDAR3

Dershowitz- Direct

1 DIRECT EXAMINATION

2 BY MR. DONALDSON:

3 Q. Good afternoon, Mr. Dershowitz.

4 A. Good afternoon.

5 Q. How are you?

6 A. Good.

7 Q. I'm going to -- let's start with, could you tell us a
8 little bit about your educational background, please?9 A. I'm a lawyer. I went to Penn Undergrad and Yale Law
10 School.

11 Q. And where are you presently employed?

12 A. I am the general counsel of the Women's National Basketball
13 Association.14 Q. And how long have you been the general counsel of the
15 Women's National Basketball Association?16 A. Since it started, so that's about 27, 28 years at this
17 point.18 Q. Is there any relationship between the National Basketball
19 Association and the Women's National Basketball Association or
20 the WNBA and the NBA?

21 A. There is.

22 Q. What is that relationship?

23 A. The NBA owns a percentage of the WNBA, and we also have
24 some shared services. We function out of the same building,
25 back of house services like finance and things like that are

OA1BDAR3

Dershowitz- Direct

1 shared between the two leagues.

2 Q. When you say the NBA owns a percentage of the WNBA, does
3 that mean the NBA owns most of it? Is it the owner of the WNBA
4 or?

5 A. No. The NBA owns 42 percent of the WNBA.

6 Q. Do the WNBA and the NBA share rules and regulations or
7 guidelines?

8 A. No.

9 Q. Are you familiar with the -- do you have any relationship
10 to the NBA or the NBA G League or anything like that?

11 A. I do. I am also the general counsel of the NBA G League
12 which is the NBA's minor league, a men's league.

13 Q. Does the NBA G League's guidelines, are they similar to the
14 NBA's guidelines, regulations?

15 A. They are more similar, the NBA G League has its own rules,
16 but, for instance, they use the same playing rules on the court
17 as the National Basketball Association.

18 Q. Are you familiar with the bylaws of the WNBA?

19 A. We don't have bylaws.

20 Q. Are you familiar with the bylaws for the NBA?

21 A. I have a familiarity with them, yeah.

22 Q. Do you have any understanding of -- strike that.

23 You were the general counsel of the WNBA in 2020,
24 would that be fair to say?

25 A. Yes.

OA1BDAR3

Dershowitz- Direct

1 Q. And in that capacity as the general counsel of the WNBA in
2 2020, were you part of a process if a team were to be sold, if
3 a WNBA were to be sold?

4 A. Yes.

5 Q. Are you familiar with or were you familiar with the sale of
6 the Atlanta Dream in 2020?

7 A. I don't believe it was sold in 2020.

8 Q. Are you familiar with the sale of the Atlanta Dream in
9 2021?

10 A. Yes.

11 Q. Are you familiar with the process leading up to the sale of
12 the Atlanta Dream in 2021?

13 A. Some aspects of that.

14 Q. Do you know a person named Mr. Brock from the Atlanta
15 Dream?

16 A. I do.

17 Q. In January of 2020, were you contacted by Mr. Brock related
18 to the sale of the Atlanta Dream?

19 A. I don't recall any specific contact in that timeframe.

20 Q. You don't recall any specific contact with Mr. Brock period
21 in 2020 related to the sale of Atlanta Dream?

22 A. I thought you said January of 2020.

23 Q. I did. January of 2020?

24 A. I don't recall specific something happening in January of
25 2020.

OA1BDAR3

Dershowitz- Direct

1 Q. Are you familiar with Dwight Howard?

2 A. Yes.

3 Q. Do you recall Dwight Howard participating in a process to
4 purchase the Atlanta Dream in 2020?

5 A. I recall conversations about potential purchase by Dwight
6 Howard in 2020 of the Atlanta Dream.

7 Q. Let me go back. When an WNBA team is being sold, does the
8 WNBA board of governors have to approve the sale of that
9 specific team?

10 A. Yes.

11 Q. Now, going back to the sale of the Atlanta Dream in 2021,
12 going back further, would you consider the process of selling
13 the Atlanta Dream in 2020 and 2021 a high profile situation?

14 A. You're asking for my opinion?

15 Q. Yes. Your opinion on whether or not you consider the sale
16 of the Atlanta Dream in 2020, 2021 a high profile situation?

17 MR. THOMPSON: Objection.

18 THE COURT: Sustained. You can rephrase the question.

19 Q. When did you first hear about the Atlanta Dream being for
20 sale in 2020?

21 A. I don't recall any specific date or any specific
22 conversation.

23 Q. How did you hear about the Atlanta Dream being sold or
24 potentially being sold in 2020?

25 A. I'm not certain.

OA1BDAR3

Dershowitz- Direct

1 Q. What role, if any, did you play in the Atlanta Dream being
2 sold in 2020?

3 A. The league is essentially the gatekeeper when a current
4 team owner wants to sale a team, so we would provide various
5 services in connection with potentially teeing the sale up for
6 the board of governors to make a decision.

7 Q. So in that capacity in 2020, did you have any role and
8 responsibility related to actually the sale of the Atlanta
9 Dream to potential purchasers?

10 A. So at one point closer to 2021 there was a purchase
11 agreement that was signed, and we did some due diligence and we
12 teed it up for approval by the board of governors.

13 Q. Earlier you mentioned you that know -- you recall, you have
14 familiarity with Mr. Brock. Who exactly was Mr. Brock to you
15 in 2020? What was his relationship to you in 2020?

16 A. The owners of the Atlanta Dream back then, one of them, her
17 name is Mary Brock, and John Brock is her husband.

18 Q. And what role, if any, was Mr. Brock playing in the sale of
19 the Atlanta Dream in 2020?

20 A. He was leading the process on behalf of his wife and her
21 co-owner at the time. He was leading the process to sell the
22 team.

23 Q. As part of that process that he was leading to sell the
24 team, was Mr. Dwight Howard part of that process as well?

25 A. There came a time when Mr. Brock brought to the league's

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1 attention the interest of Dwight Howard in purchasing the team.

2 Q. Are you familiar with someone named Calvin Darden, Sr., or
3 have you heard the name Calvin Darden, Sr., before?

4 A. I've heard the name, yes.

5 Q. Have you heard the name Calvin Darden, Jr., before?

6 A. I have.

7 Q. Have you heard the name Charles Briscoe before?

8 A. I have.

9 Q. Do you recall in who -- how you do recall the name Calvin
10 Darden, Sr.?

11 A. There was a zoom call in the summer of 2020 that I was on
12 that he was on as well.

13 Q. In that zoom call was Calvin Darden, Jr., on the zoom call
14 as well?

15 A. I believe so, yes.

16 Q. On July 10, 2020, you received an email from Mr. Brock
17 introducing you and Ms. Engelbert to Mr. Briscoe. Do you
18 recall that or did that happen?

19 A. I don't have a recollection of that particular email,
20 sorry.

21 MR. DONALDSON: Could you put up Exhibit 2103. I
22 believe this is in evidence already, Judge.

23 THE COURT: Okay. All right.

24 MR. DONALDSON: Put up 2103 for witness only.

25 THE COURT: Okay. This is 2103 for identification?

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1 MR. DONALDSON: Yes.

2 THE COURT: Okay. Go ahead.

3 Q. Mr. Dershowitz, do you see what's on the screen in front of
4 you 2103?

5 A. Yes, I do.

6 Q. And this is an email, correct?

7 A. Yes.

8 Q. Do you recognize your name as being CC'd on that email?

9 A. Yes.

10 Q. And this is July 10, 2020?

11 A. Yes.

12 MR. DONALDSON: I'd like to admit this into evidence
13 as Government Exhibit 2103.

14 THE COURT: The email address, at the time was that
15 your email address?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Yes.

18 MR. THOMPSON: Your Honor, request voir dire of the
19 witness with respect to this document.

20 THE COURT: Sure. Go ahead.

21 VOIR DIRE EXAMINATION

22 BY MR. THOMPSON:

23 Q. Mr. Dershowitz, do you now recall having read this document
24 sitting here today, do you have a present recollection of
25 having read it?

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1 A. Not in 2020, no.

2 MR. THOMPSON: The government objects to its
3 submission.4 THE COURT: I'm going to allow the admission to the
5 document. Since that time, have you seen this email?

6 THE WITNESS: I have.

7 THE COURT: So I'm going to allow the admission of
8 this document. But, ladies and gentlemen, so this Government
9 Exhibit 2103 is not being admitted for the truth. It's being
10 admitted for a limited purpose, and that limited purpose is to
11 show the email's impact on what's discussed in the email on
12 Mr. Dershowitz at the time. In other words, his state of mind,
13 but it's not being offered for the truth of the matters stated
14 in the email. Go ahead, Mr. Donaldson.

15 (Government's Exhibit 2103 received in evidence)

16 BY MR. DONALDSON:

17 Q. Looking at 2103 in evidence, second paragraph reads: Hello
18 Kathy and -- sorry, how do you pronounce your name?

19 A. Jamin.

20 Q. Would you prefer I call you Jamin or Mr. Dershowitz?

21 A. Jamin is fine.

22 Q. It says, hello Kathy and Jamin. Jamin is you, correct?

23 A. Yes.

24 Q. As John stated, we are seriously interested in acquiring
25 the Atlanta Dream. Dwight along with the rest of the group

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1 have many ideas to continue the progression of the Atlanta
2 Dream and the WNBA. We thank you for your time and look
3 forward to the opportunity to discuss our plans in hopes of
4 acquiring the team.

5 You were on that email, correct?

6 A. That's what it says, and I have no reason to dispute that.

7 Q. You testified earlier back in July it was brought to your
8 attention that Dwight Howard wanted to participate in buying
9 the Atlanta Dream; is that correct?

10 A. I don't know that I said it was necessarily July, but it
11 was brought to my attention at some point, yes.

12 Q. After it was brought to your attention that Mr. Howard --
13 did you know who Mr. Howard was an active member of the NBA at
14 that time?

15 A. I knew he was an NBA player. I wasn't certain that he was
16 still active. I know he was toward the end of his career.

17 MR. DONALDSON: Could we please put up 2104 please for
18 the witness only.

19 Q. Showing you what's been marked what's Government Exhibit
20 2104, just for your eyes only.

21 Do you see that in front of you?

22 A. Yes.

23 Q. And do you see your email address on this as well?

24 A. Yes.

25 Q. And that's the same email address you used back in July

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1 2020?

2 A. Yes.

3 MR. DONALDSON: Your Honor, I'd like to move this into
4 evidence as Government Exhibit 2104.

5 THE COURT: Voir dire?

6 MR. THOMPSON: Yes, your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. THOMPSON:

9 Q. Mr. Dershowitz, do you sitting here today have a
10 recollection of having read this document?

11 A. Not in 2020, no.

12 Q. You don't have a recollection of having read it?

13 A. Not back then, no.

14 Q. And do you have any recollection of whether this document
15 or email had any effect on you?

16 A. I don't.

17 MR. THOMPSON: The government objects to the admission
18 of this exhibit.

19 THE COURT: I'm going to allow the exhibit in evidence
20 2104, and allow defense to probe that issue. And I can revisit
21 its admission once I've heard the testimony. So Government
22 Exhibit 2104 is admitted into evidence.

23 (Government's Exhibit 2104 received in evidence).

24 THE COURT: Ladies and gentlemen, the same curative
25 instruction, the instruction I gave you before on the law and

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1 the purpose for the admission of the exhibit also applies to
2 this one. So it's not being admitted for the truth, it's being
3 admitted to show any impact it may have had on Mr. Dershowitz
4 at the time of its sending, but it's not being admitted for the
5 truth. So it's being admitted for a limited purpose.

6 Go ahead, Mr. Donaldson.

7 BY MR. DONALDSON:

8 Q. Mr. Dershowitz, you indicated that in July you got on a
9 zoom call. Do you recall that?

10 A. Yes.

11 Q. And on the zoom call I believe you said contained
12 Mr. Darden, Sr., Darden, Jr., and possibly Briscoe as well?

13 A. I'm not sure I said that.

14 Q. Did you get on a zoom call in July of 2020 related to the
15 sale of the Atlanta Dream?

16 A. I do remember a zoom call with Dwight Howard and Calvin
17 Darden, Sr., and Calvin Darden, Jr. I believe Briscoe was on.
18 I don't have a strong recollection of him being on the call.

19 Q. And prior to getting on that zoom call -- well, the zoom
20 call, what was the zoom call? What was the purpose of the zoom
21 call if you recall?

22 A. I think it was introductory in nature. I believe the
23 ownership group led by John Brock at the time was interested in
24 introducing them to the league.

25 Q. And the email that's in front of you now, 2104, that's an

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1 email from -- well, from Ms. Engelbert, and Ms. Engelbert is
2 the commissioner of the WNBA, correct?

3 A. Yes.

4 Q. Or she was back in 2020, correct?

5 A. Yes.

6 Q. In this email it says on, July 11. Thank you for your
7 interest. Jamin and I are happy to get on a call at your
8 convenience. Please let us know time that work for you over
9 the next few days. Do you see that?

10 A. I do.

11 Q. And the date of this email is July 11, 2020, correct?

12 A. Yes.

13 MR. DONALDSON: Can we put up 2109, please, for
14 witness only.

15 THE COURT: Is this already in evidence?

16 MR. DONALDSON: No, just for the witness only.

17 THE COURT: Okay. All right.

18 Q. Now, Mr. Dershowitz, looking at Government Exhibit 2109,
19 that has your email up there as well, correct?

20 A. Yes.

21 Q. And that's the same email from the two prior emails,
22 correct, two prior government exhibits, correct?

23 A. Yes.

24 Q. And that's from 2020 when you were still GC of the WNBA,
25 correct?

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1 A. Correct.

2 Q. And this email is from commissioner Ms. Engelbert related
3 to the zoom call, correct?

4 A. Yes.

5 Q. And that's on July 12, correct?

6 A. It appears to be an invitation for a zoom call on July 12,
7 yes.8 Q. And that would be after the July 11 email where you say you
9 and Ms. Engelbert say you're going to have a follow-up call,
10 correct?

11 A. Based on the emails, yes.

12 MR. DONALDSON: I'd like to move this into evidence as
13 Government Exhibit 2109.

14 THE COURT: Okay.

15 MR. THOMPSON: No objection.

16 THE COURT: Okay. Government Exhibit 2109 is admitted
17 in evidence.

18 (Government's Exhibit 2109 received in evidence)

19 BY MR. DONALDSON:

20 Q. Now, Mr. Dershowitz, this is the zoom call that you related
21 to when you said that you, Mr. Darden, Sr. and Mr. Darden, Jr.,
22 and Charles Briscoe talked about the introductory part of the
23 Atlanta Dream, correct?24 A. Again, I don't think you're characterizing it exactly
25 precisely.

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1 Q. This is the zoom call that occurred in July of 2020 with
2 you, Ms. Engelbert, Mr. Darden, Sr., Mr. Darden, Jr., and
3 Mr. Briscoe, and I believe you said Mr. Howard, correct?

4 A. I think I said I wasn't as certain Mr. Briscoe was on the
5 call as I was the others. It would be guesswork on my part to
6 say that this necessarily was that zoom call. It would be
7 guesswork.

8 MR. DONALDSON: Could you put up 3500, Section 3518-1
9 for witness only, please. Could you scroll down a page. Right
10 there.

11 Q. Now, before we get to this, before that zoom call, before
12 the zoom call that occurred, you did research on the persons
13 that you thought would be on the zoom call; would that be fair
14 to say?

15 A. I did with respect to people on the zoom call whom I didn't
16 know, yes.

17 Q. And the persons you didn't know were Darden, Jr., Darden,
18 Sr., is that correct?

19 A. Yeah, I only recall either myself or a colleague doing --
20 looking up Darden, Jr. It's certainly possible that I also
21 looked up senior.

22 Q. And based upon that research on Darden, Jr., what did you
23 find out about Darden, Jr. if you recall?

24 A. I saw that Darden, Jr. had been convicted of a crime.

25 Q. Okay. And before that zoom call happened, you also did

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1 research on Mr. Howard, correct, Dwight Howard, correct?

2 A. I don't recall that.

3 Q. You don't recall whether you did research on Dwight Howard?

4 A. I don't.

5 Q. When you attended the zoom call -- strike that.

6 Before you attended the zoom call, did you contact
7 Mr. Brock related to what you found out about Mr. Darden?

8 THE COURT: Darden, Jr.

9 Q. Darden, Jr. my apologies.

10 A. I have no recollection of speaking with Mr. Brock between
11 the time I learned of Darden, Jr.'s issue in the zoom call.
12 That doesn't resonate. I don't recall that.

13 Q. And as far as the participation, you don't recall whether
14 or not Mr. Briscoe was on the phone call, correct?

15 A. I just don't have a strong recollection as I do of, it's a
16 zoom call. I definitely remember seeing Dwight Howard. I
17 definitely remember focusing on senior and junior. Those are
18 in my mind. I just don't have that specific a recollection of
19 Briscoe.

20 Q. And when you got on the zoom, while you were on the zoom
21 call, did you announce to the persons on the zoom call that
22 Mr. Darden, Jr. had a criminal record?

23 A. I don't think so.

24 MR. DONALDSON: Could we scroll down, please. Scroll
25 back up.

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1 Q. I'm going to show you 3518-1 to see if that refreshes your
2 recollection. Look at page --

3 MR. DONALDSON: Give me one second please, Judge.

4 THE COURT: Okay.

5 MR. DONALDSON: Can you scroll up some, scroll up a
6 little bit more, scroll up a little bit more. I'm sorry about
7 that. My apologies.

8 Q. Mr. Dershowitz, if you could, could you read the final
9 bullet point on the top of page one, that section, to see if
10 that refreshes your recollection as to whether or not you
11 mentioned the information about Mr. Darden, Jr. on that zoom
12 call?

13 A. Can you describe what bullet you want me to read?

14 Q. The eighth bullet point down, that section starts there
15 where it says "believe."

16 A. All the sub-bullets in that as well?

17 Q. Yes, please.

18 A. Okay.

19 Q. You see it?

20 A. Yes.

21 MR. DONALDSON: Could you scroll down a little bit
22 more, please.

23 Q. You see that second bullet point that starts with believe,
24 could you read that as well to see if that refreshes your
25 recollection.

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1 A. Along with the sub-bullets as well?

2 Q. Yes.

3 A. Okay.

4 Q. Does that refresh your recollection as to whether you said
5 on that zoom call that Mr. Darden, Jr. had a criminal
6 conviction?

7 A. It doesn't.

8 MR. DONALDSON: Could you scroll up, I'm sorry, down a
9 little bit more.

10 Q. Please read the sixth open bullet point, top of page two.

11 A. Okay.

12 Q. Now, does that refresh your recollection where it says JD
13 focused on facts --

14 MR. THOMPSON: Objection.

15 THE COURT: Where in this document are you referring
16 to? Okay. I see it.

17 MR. DONALDSON: For point of context for
18 Mr. Dershowitz.

19 THE COURT: What was the question?

20 MR. DONALDSON: The question was whether or not
21 Mr. Dershowitz on that zoom call informed the other parts on
22 that zoom call that Darden, Jr. had a criminal conviction.

23 THE COURT: You already asked the question whether or
24 not the prior thing refreshed Mr. Dershowitz' recollection. So
25 having looked at the bullet points that counsel just directed

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1 you, does that refresh your recollection concerning whether or
2 not you communicated on the zoom call the fact of Mr. Darden,
3 Jr.'s conviction?

4 THE WITNESS: It does not.

5 THE COURT: Okay. Go ahead.

6 BY MR. DONALDSON:

7 Q. On March 7, 2023, you did speak to the government, correct,
8 the document in front of you?

9 A. I haven't read any dates on this. I'm sorry.

10 Q. Do you recall meeting with the government on March 7, 2023
11 related to this case?

12 A. I got a phone call from the government in 2023 about this.

13 Q. And when you had that phone call with the government about
14 this issue, you were asked questions related to the zoom call
15 of July 12, 2020, correct?

16 A. Yes.

17 Q. And one of the questions they asked you was whether or not
18 you --

19 THE COURT: Go ahead.

20 Q. -- informed the persons on the zoom call that Mr. Darden,
21 Jr. had a felony conviction?

22 A. I don't recall that question.

23 Q. I'm showing you notes from March 7, 2023. Look at that
24 portion starting with bullet point zoom call and going down to
25 see if that refreshes your recollection as to whether or not

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Dershowitz- Direct

1 you told the government on March 7, 2023 that you focused on
2 the fact that the son was a felon?

3 A. It appears to me to be two questions. Did I focus on it or
4 did I say it?

5 THE COURT: No. The issue is reading from the bullet
6 point on page one at the bottom where it says, zoom call, down
7 through the sub-bullet points that end, don't remember. If you
8 could take a look at that.

9 And so then the question is, does that refresh your
10 recollection concerning whether you told the government back in
11 March of 2023 that you raise the issue of Darden, Jr.'s
12 criminal conviction on the zoom call, whether you during that
13 March conversation, does that refresh your recollection?

14 THE WITNESS: It doesn't.

15 Q. Regarding Mr. Howard, would it be fair to say, not would it
16 be fair so say.

17 Did you have conversations with Mr. Brock related to
18 Mr. Howard not being able to purchase the Atlanta Dream?

19 A. I don't recall a specific conversation, no.

20 Q. Well, not a specific conversation, did you have a
21 conversation with Mr. Brock related to Mr. Howard not being
22 able to purchase a WNBA team?

23 A. It's very likely that I did, but I don't recall a specific
24 conversation.

25 Q. Why is it very likely that you did have a conversation with

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Dershowitz- Direct

1 Mr. Brock saying that Mr. Howard could not purchase an NBA
2 team?

3 THE COURT: WNBA.

4 Q. WNBA. My apologies, Judge.

5 A. So as my role as a gatekeeper, one of the things that we
6 would do is, we would enforce any rules regarding ownership.
7 And under current rules, under the rules, these are NBA rules,
8 NBA players, current NBA players were not permitted to purchase
9 WNBA teams.

10 Q. You also -- not also. Did you also have a conversation
11 with Mr. Brock that Mr. Howard could not buy it and give it to
12 someone else and run it from behind the scenes?

13 A. I don't recall that.

14 Q. Going back to your March 7, 2023 interview with the
15 government, do you recall being asked whether or not you
16 informed Mr. Brock that Mr. Howard could not own a WNBA team
17 and own one from behind the scenes?

18 A. I don't have a recollection of that specific conversation,
19 no.

20 MR. DONALDSON: Judge, can I have a second, please?

21 THE COURT: Yes.

22 Q. I want to direct your attention back to what's on your
23 screen 3518-1, March 7, 2023 interview.

24 MR. DONALDSON: Could you go up to page one, please.
25 Can we slide up a little bit, please.

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1 Q. Mr. Dershowitz, I'm going to ask you to look at the sixth
2 and seventh subpoints on page one. Read that. See if that
3 refreshes your recollection as to whether or not on March 7,
4 2023, you told the government that Mr. Howard could not own the
5 team. And that if another group buys it, Mr. Howard couldn't
6 have an option to buy it as well once he retires.

7 Could you please look at that to see if that refreshes
8 your recollection as to whether you told the government that on
9 March 7, 2023?

10 A. I believe I did with respect to the option, yes.

11 Q. I'm sorry.

12 A. Yes, it does refresh my recollection.

13 Q. So back in March 7, 2023, just so I'm clear, you did inform
14 the government that Mr. Howard, if another group buys,
15 Mr. Howard could not have an option to buy it once he retires,
16 correct?

17 A. Yes.

18 Q. Because that would be the same as owning it, correct?

19 A. The WNBA treats options the same way as they do ownership
20 outright. So if there is an option to purchase, we would do
21 the same approval process as for that option as we would for
22 ownership.

23 Q. And that was communicated to Mr. Brock by you, correct?

24 A. Again, very likely, but I don't have a specific
25 recollection.

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Dershowitz- Direct

1 Q. Could a player, could an active NBA player directly or
2 indirectly own a WNBA team back in 2020?

3 A. No.

4 Q. Back in 2020 could a person with a felony conviction own a
5 WNBA team?

6 A. That's -- it's not impossible.

7 Q. But in order to do that, the person with the felony
8 conviction would have to get special permission from the board
9 of governors, correct, if you know?

10 MR. THOMPSON: Objection.

11 THE COURT: Sustained. If someone was convicted of a
12 felony, you said it's not impossible. What would the process
13 be that someone would have to undergo if they wanted to
14 purchase a WNBA team at the time in 2020 if they had been
15 convicted of a felony?

16 THE WITNESS: So we do a full background check of any
17 potential owners which includes a criminal background check.
18 And if there are matters of concern, we would raise that to the
19 attention of the board of governors. And while it would be
20 very unlikely that someone with a felony conviction could ever
21 be approved by the board of governors, it's a different process
22 by which it's not a bar. It's not a definitive bar. It's
23 something that we would point out and the board of governors
24 would have to make that decision.

25 THE COURT: All right. Next question.

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Dershowitz- Direct

1 MR. DONALDSON: Could you put up 21144A I believe
2 that's in evidence, Judge.

3 THE COURT: Okay.

4 MR. DONALDSON: Right now just for the witness 2144A.
5 Could you scroll down, please, a few pages for me, please.
6 Keep going. You can put that for everybody, please. I believe
7 it's in evidence.

8 Q. Now, Mr. Dershowitz, do you recall seeing this presentation
9 back in 2020?

10 A. I recall seeing this page that's in front of me now, yes.

11 Q. When you saw this, would it be fair to say -- in your
12 capacity or your responsibilities as general counsel, would it
13 be fair to say is it common for the potential buyers to have
14 celebrity list like this?

15 MR. THOMPSON: Objection.

16 THE COURT: If you could rephrase the question cause
17 you said --

18 MR. DONALDSON: I did, Judge.

19 THE COURT: You said celebrity list like this. That's
20 not exactly what the document --

21 MR. DONALDSON: Right.

22 Q. Is it common for potential buyers to have a list like this
23 in their pitch deck?

24 A. I don't typically see pitch decks when a team is being sold
25 by another to a potential buyer.

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Dershowitz- Direct

1 Q. When you saw this particular list, I'm sorry. You said you
2 don't normally see -- what's your last answer?

3 THE COURT: I can read it back. I don't typically see
4 pitch decks when a team is being sold by another to a potential
5 buyer.

6 Q. When you saw this particular list, did it move you in any
7 way related to Howard or Darden owning the team?

8 MR. THOMPSON: Objection.

9 THE COURT: Well, objection overruled. Do you recall
10 your reaction at the time when you saw this list of folks under
11 the title advisory board in this document?

12 THE WITNESS: I do.

13 THE COURT: Okay. And what was your reaction?

14 THE WITNESS: Sort an eye roll I guess would be the
15 best way to describe it.

16 Q. I'm sorry.

17 A. Sort of an eye roll would be the best way to describe it.

18 Q. Eye roll in that it did not impress you, correct?

19 MR. THOMPSON: Objection.

20 A. Correct.

21 THE COURT: I'll allow it.

22 A. Correct.

23 MR. DONALDSON: Could you scroll down one page.
24 Scroll down one more. Go down the corporate list, to the
25 corporate list. Thank you. Right there.

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Dershowitz- Direct

1 Q. Did you see this as well back in 2020 if you recall?

2 A. I do have a recollection of this seeing this, yes.

3 Q. And when you saw this one --

4 THE COURT: Just to be clear, it's a document. It's
5 part of the same exhibit. At the top it says corporate
6 affiliations. I don't know, it doesn't have a -- I don't know
7 what the page number is, but it's got corporate affiliations.

8 MR. DONALDSON: I think it's page 18.

9 Q. I'm showing you what's page 18 of 2144A titled corporate
10 affiliations. You said you remember seeing this back in 2020,
11 correct?

12 A. Yes.

13 Q. And when you saw this back in 2020, did this have any
14 effect on you related to Howard or Darden purchasing the Dream?

15 A. No.

16 Q. And the list of the persons that we saw earlier that was on
17 2144, did that have an effect on you whether Mr. Darden and
18 Mr. Howard could purchase the Dream?

19 THE COURT: When you're saying -- let's have some
20 clarity. Darden, Jr., Darden, Sr.

21 MR. DONALDSON: Darden, Sr.

22 A. Can you repeat the question.

23 Q. The list that we showed you previously --

24 MR. DONALDSON: If you can go back up to the list
25 Mr. Ross please.

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Dershowitz - Cross

1 Q. Did this list have any effect on whether or not Mr. Darden,
2 Sr., or Mr. Howard could purchase the Atlanta Dream?

3 A. No.

4 MR. DONALDSON: I don't have anything further.

5 THE COURT: Okay. Cross-examination.

6 CROSS-EXAMINATION

7 MR. THOMPSON: May I proceed, your Honor.

8 THE COURT: You may.

9 BY MR. THOMPSON:

10 Q. Good afternoon, Mr. Dershowitz.

11 A. Good afternoon.

12 Q. Do you recall being asked questions about the vision plan
13 Government Exhibit 2144A on cross-examination?

14 A. Just now?

15 Q. Yes.

16 A. Yes.

17 Q. Excuse me. On direct examination. Forgive me.

18 Now, you described your role as GC of the WNBA as a
19 gatekeeper. Is that right?

20 A. Yes.

21 Q. Fair to say in that capacity you collect materials relevant
22 to potential purchasers buying a team, right?

23 A. Yes. Once it's presented to the league, we would do that
24 due diligence, yes.

25 Q. And once the due diligence is completed and you've

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Dershowitz - Cross

1 collected materials, you give the materials to the board of
2 governors. Is that right?

3 A. Not the materials themselves, no.

4 Q. You present the board of governors with information to
5 allow them to decide whether a team should be sold. Is that
6 fair?

7 A. If it gets to that point, we would present the information
8 to the board of governors for them to make a decision.

9 Q. On direct examination you were asked questions about the
10 individuals listed on an advisory board; is that right?

11 A. Yes.

12 Q. And you testified that it caused you to do an eye roll. Is
13 that right?

14 A. That's how I described it, yes.

15 Q. But respectfully your view of that advisory board had no
16 view as to whether the board of governors would actually sell
17 the Atlanta Dream to Mr. Darden's Group. Isn't that right?

18 A. Can you repeat the question.

19 Q. Your view of the advisory board and the vision plan had no
20 impact on whether the board of governors was responsible for
21 the sale of the WNBA teams would actually sell the team to
22 Mr. Darden's group; isn't that right?

23 A. Just that the board of governors doesn't sell the team.

24 Q. Approve the transaction. I'll restate the question again.

25 Your view of the advisory board and the vision plan

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Dershowitz - Cross

1 had no impact on whether the board of governors would approve
2 the transaction to sell the team to Mr. Darden's group, right?

3 A. That's accurate, yes.

4 Q. And your view of the corporate sponsors in the vision plan
5 that similarly had no view -- no impact on whether the board of
6 governors would approve the transaction to sell the team to
7 Mr. Darden's group, right?

8 A. That's accurate.

9 Q. And your view of the vision plan writ large in total had no
10 impact on whether the board of governors would sell the Atlanta
11 Dream to Mr. Darden's group?

12 A. Can you repeat question because the board of governors
13 doesn't do the sale.

14 Q. Thank you. Your view on the vision plan in general had no
15 impact on whether the board of governors would approve a
16 transaction to sell the team to Mr. Darden's group, right?

17 A. I believe that's accurate, yes.

18 MR. THOMPSON: Nothing further. Thank you.

19 THE COURT: Okay. Any direct?

20 MR. DONALDSON: No.

21 THE COURT: Okay. Thank you very much. You may step
22 down.

23 THE WITNESS: Thank you.

24 (Witness excused)

25 THE COURT: Okay. So, ladies and gentlemen, as I

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Dershowitz - Cross

1 mentioned that will conclude the testimony for today. We're
2 going to continue the defense case tomorrow at 10 o'clock. All
3 right. Remember, do not discuss the case with one another. Go
4 home, relax, or whatever you have planned for this afternoon.
5 And you can leave your pads either on your chairs or in the
6 back. All right. Thank you very much.

7 (Continued on next page)

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OA1BDAR3

Dershowitz - Cross

1 (Jury not present)

2 THE COURT: You may be seated. So I'd like to do
3 several things later on this afternoon after we take the lunch
4 break. One is complete the discussion concerning Mr. Ricco's
5 letter from earlier this morning concerning the items numbered
6 one and two. I think we've already had -- the other issues
7 have been resolved, and next to do the charging conference. So
8 just to let the parties know, typically what I do at the
9 charging conference, everyone should a copy of the charge that
10 was circulated last night. I will ask who has the first
11 comment and we'll go through it in essence page by page until I
12 have all the comments from both sides concerning the charge,
13 and we can talk about making revisions, things like that.

14 So to the extent there are objections, that is the
15 time to raise them. Is there anything else other than those
16 things? I know that there are going to be at least two defense
17 witnesses tomorrow. I will allocute Mr. Darden, and the
18 government should proceed as if he were going to testify and be
19 prepared to go from whomever it is, either Mr. Slade or Sienko,
20 whoever is the last witness before Mr. Darden after his direct
21 to proceed with cross-examination.

22 MR. MEAD: That makes sense, your Honor. And I assume
23 this is the Court's plan that the defense will rest at the end
24 of the day tomorrow such that we wouldn't have a surprise of
25 Mr. Darden's testimony on Thursday morning?

OA1BDAR3

Dershowitz - Cross

1 THE COURT: No. No. Tomorrow I find out one way or the
2 other. Fish or cut can bait as they say I guess whether or
3 not -- in other words, I'm not going to hold in abeyance the
4 defense resting until Thursday. The defense will rest
5 tomorrow. Obviously if Mr. Darden and his testimony goes over
6 into Thursday, that's a separate matter, but I suspect that we
7 may not use -- well, if Mr. Darden testifies it may take up
8 more of the day tomorrow than I anticipate right now with just
9 the two defense witnesses which have been estimated at about 30
10 or 40 minutes each, and then redirect. So we'll get through
11 the substantial part of the morning, but there's no reason to
12 hold in abeyance that decision until Thursday, cause as I
13 indicated, we're going to do summation on Thursday. Again,
14 assuming that the defense case is done.

15 Any questions with regard to that?

16 MR. MEAD: No, your Honor.

17 THE COURT: From the defense?

18 MR. DONALDSON: No, your Honor. Thank you.

19 THE COURT: All right. So why don't we come back at
20 about 2:45 to complete the discussion of items one and two in
21 Mr. Ricco's letter, and then we'll have the charge conference.
22 Are folks going to be able to get -- we can have copies printed
23 of the charge if you're not going back to your office. Do you
24 have a copy of the charge?

25 MR. RICCO: We have it on our computers, but if we can

OA1BDAR3

Dershowitz - Cross

1 have a copy, it would be helpful.

2 THE COURT: We could make it. We'll make one copy.

3 And does the government wish us to print out a copy?

4 MR. MEAD: We're all set, your Honor.

5 THE COURT: We're going to come back at 2:45. And if
6 there are any other issues to be taken up, we can always take
7 them up at that point. Mr. Donaldson and the defense team,
8 make sure that you have -- again, I'm going to ask that you
9 this evening make sure that you have the exhibits you
10 anticipate getting that they're in just so that there's not an
11 issue when you decide that you're going to rest the case. And
12 I'll hear from you concerning any obligations or motions after
13 the close of the defense case.

14 MR. RICCO: So, Judge, based on Mr. Dershowitz's
15 testimony, there is one exhibit that we may seek to introduce.
16 I have to look at it during the lunch hour, and I'll report
17 back to the Court, but that document is in the 3500 material.
18 It's not a new document.

19 THE COURT: But, wait, it's in 3500 material?

20 MR. RICCO: Not the 3500. I want to take a look at
21 it. It's something I thought I saw, and I just want to make
22 sure. If it is something we intend to offer, I'll let them
23 know.

24 THE COURT: Please do, and then we can discuss it
25 after the lunch break.

OA1BDAR3

Dershowitz - Cross

1 MR. RICCO: Thank you.

2 THE COURT: Anything before we take our lunch break?

3 MR. DONALDSON: No.

4 MR. THOMPSON: No, your Honor.

5 THE COURT: Thank you. I'll see everybody at 2:45.

6 Thank you very much.

7 (Recess)

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OA1JDAR4

1 AFTERNOON SESSION

2 2:45 p.m.

3 (In open court; jury not present)

4 THE COURT: My plan was to first discuss items one and
5 two from Mr. Ricco's letter, and then to discuss any issues
6 that the parties want to discuss and then to do the charge.7 Okay. So first, with regard to item one, we had some
8 discussion. First, I guess my one question I do have that I
9 had not asked earlier is how does this information come in? In
10 other words, is there a document of some sort? I thought that
11 there were two contracts of Mr. Howard's that came in evidence,
12 but am I incorrect about that?13 MR. DONALDSON: No, you're correct. I believe they
14 were Government Exhibits 349 and maybe 351.

15 MR. MEAD: 394 and 399 I want to say.

16 THE COURT: So is that where this information comes
17 from? Where does this information come from?18 MR. LEGON: Your Honor, the contracts have to be filed
19 with the NBA main office and the NBA by the commissioner. And
20 the contracts are essentially -- one of the roles of the NBA is
21 to look over every single player's contract and make sure that
22 it conforms. A player cannot play, for instance, unless that
23 contract conforms to the requirements of the NBA. And there's
24 so many different areas that it's relevant to. For instance,
25 the salary cap, they have league minimum salaries --

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1 THE COURT: I guess before you get there, is there a
2 document you intend to offer? Is there testimony that someone
3 is going to say, this is what Mr. Howard earned in 2020 and
4 2021?

5 MR. LEGON: Yes, your Honor.

6 THE COURT: Who is that?

7 MR. LEGON: Your Honor, perhaps we can discuss it with
8 the government and do it through a stip. This is not in
9 controversy. This is a filed contract. These are filed
10 accounts and they --

11 THE COURT: I just don't know. Do the contracts that
12 are already in evidence, what period of time do they cover?

13 MR. LEGON: They only cover two periods. They don't
14 cover his entire career and his entire career earnings. So
15 what we would do is these are publically recorded, and what we
16 would do is perhaps a chart through our paralegal or a stip
17 that these are his career earnings, and we have those career
18 earnings.

19 THE COURT: Okay. But now let's return to what is the
20 relevancy of the fact that Mr. Howard, that up to the
21 2020/2021, I guess, season or whatever, that he earned a total
22 of between 240 and \$245 million in salary?

23 MR. LEGON: So once again, I think it goes to whether
24 or not he had the financial wherewithal to purchase a team and
25 be involved here. And also I think it relates to the questions

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1 that were asked of him and answered regarding a tax bill that
2 he had, a large tax bill that he had and whether or not -- what
3 the interrelationship between his current financial situation
4 and what he was trying to do, whether that was supported by his
5 net assets that he had earned over the course of his career.

6 THE COURT: My recollection is that Mr. Howard was
7 never asked about tax --

8 MR. LEGON: Withdrawn, your Honor.

9 I meant Mr. Schmidt discussed the tax bill.

10 THE COURT: Okay. But I don't believe there was a
11 specific quantification of what that tax liability was.

12 MR. LEGON: You're correct, your Honor.

13 THE COURT: And so again, I just return to the fact
14 that he was able to come up with a line of credit for
15 \$7 million and that he had no difficulty basically -- in other
16 words, coming up with that. In other words, I'm not sure what
17 the financial wherewithal of Mr. Howard -- I don't think that's
18 in dispute.

19 In other words, I don't know exactly whether he earned
20 \$50 million, \$10 million. He was able to, through the
21 testimony of Mr. Schmidt, able to arrange for financing such
22 that he came up with \$7 million. So I'm not sure -- again,
23 I --

24 MR. LEGON: Your Honor, if that is the case, your
25 Honor, what's the prejudice here? It doesn't seem that this

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1 information coming in --

2 THE COURT: Because you don't want to paint the guy as
3 a rich guy who the jury shouldn't care about.

4 MR. LEGON: That's not what we're --

5 THE COURT: That may not be the argument, but unless
6 there's some relevance, the 403 balancing test would, I think,
7 outweigh any relevance of this. So I guess I'm just trying
8 to figure out exactly -- because the delta -- because you're
9 saying, well, it doesn't really matter because he was able to
10 come up with \$7 million. And so while it's -- so there's no
11 issue, at least as far as I know, in the record that -- well,
12 A, that is some sort of a pipe dream. And even if it was a
13 pipe dream, it's still out -- so I just don't -- and I
14 apologize because maybe I'm missing why it's relevant, the
15 total amount of money he earned during that time period to
16 either a particular defense issue or argument that is going to
17 be made, as opposed to just sort of rounding out the picture or
18 what have you.

19 I mean, is there a particular argument that defense
20 intends to make? And you want to make it at sidebar, you can
21 come make it at sidebar, if you don't want to reveal it. But
22 I'm trying to figure out what the relevance is so I can do what
23 I suspect -- although I haven't heard from the government yet --
24 is an argument that the prejudicial nature would outweigh any
25 relevance here. And again, that's without getting into the

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1 specifics of the particular documents that are used to
2 aggregate his salary.

3 MR. RICCO: Your Honor, can we have one moment?

4 THE COURT: Yeah. Absolutely. Go right ahead.

5 (Pause)

6 MR. RICCO: Judge, we would like to just make the
7 point at the sidebar.

8 MR. BRUSH: This is Pete Brush from *Law360*. I'm a
9 reporter with the in-house press and SDNY. I would ask that I
10 can attend the sidebar or object to a sidebar at this
11 particular juncture because I don't see any reason why these
12 discussions should be either secret or quasi secret.

13 THE COURT: Well, there is a legal reason. They're
14 not required to disclose what their arguments are to the
15 government at this time. So it may be that at a certain point
16 in time, certainly when they do arguments, assuming it's
17 admitted, that it will come out. Now, I don't have a problem
18 with you being at sidebar, but I would have a problem with you
19 then writing about it in advance of the defense being able to
20 make their argument.

21 MR. BRUSH: Then I would request if there is a ruling
22 that it be stated in open court so I know what it was.

23 THE COURT: Yes, I will say whether the information --
24 so it's item number one. I don't know whether -- Mr. Ricco, if
25 you could do me a favor because I don't believe your letter was

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1 filed.

2 MR. RICCO: No, we're going to file it, Judge.

3 MR. BRUSH: I don't believe it's in the docket.

4 THE COURT: Just so you know, this is what item number
5 one reads as follows: That up to the year 2020-2021, during
6 the relevant time period of the crimes charged, Dwight Howard
7 had a total of between 240 to \$245 million in salary earnings
8 from his contracts in the.

9 NBA. And that document will be filed --

10 MR. RICCO: Right now, judge.

11 THE COURT: Being filed right now.

12 And then there's a second item, but you'll see that
13 second one. We'll discuss that also. I'm not sure if I'm
14 going to need to have a sidebar with regard to that. So I
15 don't want -- see, the problem with you hearing it is I
16 can't -- I guess I could direct the government not to read
17 *Law360*. But let me hear from the defense. Because -- but the
18 bottom line is I rule it out, then let me think about whether I
19 just -- the transcript can be made available in due course or
20 whether you get access to it because the argument won't be
21 made. In other words, if I rule that the information is not
22 coming in, it wouldn't be a problem with everybody knowing
23 exactly what was said at sidebar. Is that --24 MR. RICCO: Yes, Judge. And I appreciate the Court's
25 step-by-step approach.

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THE COURT: Yeah. And so it may be -- we'll see where it ends up that it may be an issue that is going to be out there, and you can get access to the transcript or I can just sort of -- yeah.

MR. BRUSH: I appreciate it. While I would observe it's out there anyway from all the arguments this morning.

THE COURT: But I suspect — and I don't know — I suspect there's going to be something different that I'm going to hear at sidebar than I've heard so far, but I don't know that. And if I don't, I'll let you know if nothing was added from my perspective from the argument we had this morning.

MR. BRUSH: Appreciate it and I apologize for the disruption.

THE COURT: It's fine. If we can come to sidebar.

(Pages 1018-1022 SEALED)

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1 (In open court; jury not present)

2 THE COURT: Okay. So before I make a ruling, I'd like
3 to hear from the government with regard to item one. I've
4 heard the arguments in open court, and I've also heard the
5 argument at sidebar. Okay.

6 MR. MEAD: Just briefly, your Honor, I think the Court
7 has touched on most of the relevant points. I don't see any
8 basis at all for relevance here. There was testimony that
9 Dwight Howard had a set of stocks. He moved them over from
10 Morgan Stanley to BMO, and they secured the line of credit. He
11 was able to obtain a line of credit. He in fact, sent the
12 money that he thought was to buy the Atlanta Dream, so he
13 clearly had the financial wherewithal to buy the team because
14 he sent the wire to buy the team.

15 There's a serious, serious 403 problem here. I think
16 regardless of the defense's intent, I think there's a huge risk
17 of the jury hearing Dwight Howard made \$250 million. This is a
18 drop in the bucket. Are we really going to send someone to
19 jail for stealing two percent of this guy's money?

20 Similarly, the defense has talked about the IRS tax
21 lien. Again, regardless of the intent of the defense, there's
22 a great risk that the jury looks at Mr. Howard and says, that
23 guy's a tax cheat. Am I really going to be worried about
24 someone who stole from him as well? So there's a relevance
25 problem, there's a 403 problem.

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1 I think that I understand the letter to say something
2 different than what it literally says. I mean, it talks about
3 his earnings in 2020 and 2021. Those are the veteran's
4 minimum. I understand the defense to be talking about his
5 lifetime earning probably.

6 THE COURT: So it's up to that year.

7 MR. MEAD: Those have really minimum, not huge
8 probative value about how much money he actually had, right.
9 They're not proposing to introduce evidence about debts he had,
10 how much money he had, anything like that.

11 And then there's an admissibility problem. You know,
12 the defense is presumably known about this for a long time.
13 They sent this letter last night. They don't have a plan to
14 get this evidence in unless we just agree to it, which we're
15 not particularly inclined to do.

16 And then obviously we're in a difficult spot with the
17 Court hearing a relevance proffer at sidebar. We don't know
18 what the relevance proffer is. If the Court were to rule
19 against this, I think we'd object to there being a relevance
20 proffer at sidebar. The government's case is closed. This is
21 not three weeks before trial where the defense gets to keep all
22 their ammunition reserved. When the witnesses are on, they're
23 done.

24 So for all those reasons, we think this evidence
25 should be excluded.

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1 THE COURT: Okay.

2 MR. RICCO: Your Honor, I just want to say this, as
3 the Court knows, all of those reasons that the government
4 advanced as to why we wanted to utilize this evidence is not
5 what we discussed at all, and we accept the Court's ultimate
6 determination on that issue.

7 Mr. Mead's view of when the defense presents argument
8 like it's a surprise and taken unfair advantage, that's not the
9 case here. That application, as your Honor knows based upon
10 the testimony that came out or didn't come out at trial and the
11 Court's assessment of whether or not the use of the additional
12 information as applied to the trial testimony would be excluded
13 under 403.

14 Your Honor's made a ruling on that. We appreciate the
15 Court's insight on that. But I just want the record to be
16 clear this was not no last-minute surprise of something that we
17 knew we were going to do for months. That's not the case. And
18 those other things that the government talked about, how we
19 intended to use that evidence, it's not so. The record
20 reflects that. At the moment it's closed, and we would like
21 for it to stay that way because it does reveal our strategy and
22 what it is we plan to do.

23 THE COURT: Well, what I'll say is the following: You
24 know, I don't think I need to reach the issue of how the
25 evidence was going to come in at this stage. I haven't seen

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1 any of the contracts. I presume it was sort of an aggregation
2 over the time of the filed contract, but I don't know. So I'm
3 assuming that the 240 to \$245 million is an accurate one.

4 But I'm going to exclude that evidence. I'm assuming
5 that they would be able to lay a foundation and to get those
6 in, although I will note that the government has indicated
7 basically that it wouldn't be through a stipulation.

8 And I think there's ample evidence in the record for
9 the defense to make whatever arguments it intends to make with
10 regard to this issue, so I'm going to exclude the -- I guess it
11 would be the contracts or --

12 MR. RICCO: The contracts.

13 THE COURT: The contracts or an aggregation or summary
14 chart of those contracts adding up the amounts that Mr. Howard
15 would have earned up to the 2020/2021 timeframe.

16 Okay. So next is the judgment issue. So my
17 understanding - let me just confirm, Mr. Ricco and defense
18 counsel, that there's -- or Mr. Legon, that there's no
19 additional argument you intend to make with regard to that?

20 MR. LEGON: None, your Honor.

21 THE COURT: Okay. All right. So let me hear from the
22 government with regard to item two, which just for purposes of
23 the record states as follows: That Dwight Howard obtained a
24 judgment against Darden Enterprises LLC - I think it's ABA
25 Darden Sports Group - in the amount of \$8,682,973.43 as

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1 follows: One, 7 million principle unpaid on note; two,
2 \$1,675,346.18 accrued interest on note; and, three, attorneys'
3 fees in the amount of \$7,627.25.

4 And then there's a footnote that I don't believe is
5 necessarily relevant.

6 So it indicates that it was filed. There was a
7 judgment filed on the record in Santa Rosa County Clerk's
8 Office and issued by a Judge Clifton A. Drake on March 11,
9 2024.

10 So let me hear from the government with regard to this
11 evidence, the judgment.

12 MR. MEAD: Just briefly, your Honor, we again don't
13 see any basis at all for relevance here. The proffered basis
14 by the defense earlier this morning was that Dwight Howard got
15 something. We think that's actively misleading. He was asked
16 on the witness stand whether he recovered any money on this
17 judgment, if there was one, and he said no. It creates a
18 misimpression in the jury's mind that perhaps he may have been
19 made hole --

20 THE COURT: I'm not sure. Because I don't think he
21 understood what a judgment was. But my recollection is that he
22 indicated he hadn't gotten any money back. I think that's
23 generally, I thought, what he said.

24 MR. MEAD: I agree.

25 THE COURT: In any form.

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1 MR. MEAD: I agree with the Court. I agree with that
2 description.

3 And just to be clear, even if he had gotten the money
4 back, it would be irrelevant. If he sued to get the money back
5 that was stolen from him, that wouldn't matter either. So I
6 think this should be excluded as both irrelevant and
7 prejudicial, and it could confuse the jury.

8 THE COURT: Okay. All right. Here again, in
9 balancing the relevance, I don't actually -- I'm not sure --
10 well, I don't see the relevance. Or to the extent there is any
11 relevance, I believe it would be minimal for the judgment to
12 come in.

13 I mean, the idea that Mr. Howard got something, I
14 don't quite understand. He got a piece of paper that he could
15 then try and enforce by chasing around assets and the like of
16 an entity -- because I think the judgment was actually against
17 an entity -- an entity that may not even exist any longer, as
18 far as I know. I don't know.

19 So I think the idea of injecting the amount of money
20 that the judgment -- and it also -- the jury may not know what
21 a judgment is and understand that, and so require us to go down
22 a path where I would have to explain or have to be explained to
23 the jury, you know, what a judgment is, is something that I
24 think would be a detour that it would be unnecessary here.

25 So in balancing it and figuring under 403, in other

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1 words, the prejudice from admitting this, I just find that the
2 prejudice far outweighs any relevance that this information
3 might have for the jury. So those are the two rulings.

4 Was there anything -- I think we already -- the issue
5 of number five has already been dealt with. Mr. Dershowitz
6 testified.

7 MR. RICCO: Agreed, your Honor.

8 THE COURT: And I think there's already evidence in
9 the record about the arrest date. I don't know whether --

10 MR. RICCO: We were told.

11 THE COURT: Is that sufficient?

12 MR. RICCO: That is sufficient, Judge.

13 THE COURT: Okay. All right. So I think that
14 resolves the letter. So before we turn to the jury
15 instructions, let me hear if there are any other issues.

16 Now, as I understand it, just to recap, tomorrow
17 morning I will allocute Mr. Darden on his right to testify.
18 And I will then do so also right before the defense closes its
19 case, just to close that loop.

20 My understanding is tomorrow there will be Mr. Slade
21 and I apologize --

22 MR. DONALDSON: Mr. Sienko.

23 THE COURT: Mr. Sienko. Is it Sienko and then Slade?
24 Is that the order they're going to be called in?

25 MR. DONALDSON: I'm thinking Slade, Sienko, but --

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1 THE COURT: All right. I just don't know -- I mean,
2 you've had communications with Mr. Sienko or his counsel. I
3 don't know what their relative schedules are. Doesn't matter
4 to me. So assuming Mr. Darden does not testify, would the
5 defense be resting after the testimony of Mr. Sienko?

6 MR. DONALDSON: That will be true, yes.

7 THE COURT: Okay. All right. So let me hear whether
8 there are any issues we should take up before me move into the
9 charge conference.

10 MR. MEAD: A couple things, your Honor.

11 One, I want to confirm from the defense that there are
12 no other witnesses on the table other than Slade, Sienko, and
13 potentially Mr. Darden himself.

14 THE COURT: So I know there were certain people in the
15 mix yesterday, but I think I confirmed that certain of them --
16 right? Are there any other witnesses?

17 MR. DONALDSON: No.

18 THE COURT: Okay.

19 MR. RICCO: And Judge, I think he just asked us were
20 we resting after Mr. Sienko, and the answer was yes. That's
21 what that means. I don't know what that means other than that.

22 THE COURT: Okay. All right.

23 Yes, Mr. Mead?

24 MR. MEAD: Same question with exhibits for the two
25 witnesses tomorrow.

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1 MR. RICCO: Judge, I'm not -- you know, Judge, at some
2 point I think what we said was we were going to be resting
3 after that and any exhibits that they were going to get. This
4 question is asked every day, all day long. We're going to make
5 sure that they have whatever they have. If they don't have it
6 in sufficient time, they'll move to preclude and we won't
7 get --

8 THE COURT: What I'd say is if they don't have it by
9 7:00 tonight, what the exhibits are, I would seriously consider
10 precluding it. You have these witnesses and you know them, so
11 if they're government exhibits, just identify the exhibit
12 numbers. If there are other things, you should produce it.

13 MR. DONALDSON: Very good, Judge. Thank you.

14 THE COURT: So by 7:00 tonight.

15 MR. MEAD: Two issues if the defendant testifies
16 tomorrow which I think we previously raised, one of which is
17 the Court may remember that there was a post-arrest statement
18 made. The defense moved to exclude it. The government filed a
19 brief letter saying we're not going to use it, but reserve the
20 right to use it if the defendant testifies. And I forget the
21 Second Circuit case, but there's a Second Circuit case saying
22 we can do that to impeach.

23 On a similar note, we submitted a Rule 609(b) letter.
24 That is the defendant's third criminal case. The second
25 criminal case came in as 404(b). The first criminal case has

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1 not come in, but we would propose to cross-examine the
2 defendant about it if he were to testify.

3 THE COURT: Okay. But let me just make sure I know
4 the sequence. Is the first criminal case different -- was the
5 first criminal case in this district?

6 MR. MEAD: The first criminal case was a state case in
7 Manhattan.

8 THE COURT: Okay. All right. So in the district, but
9 not by the federal government.

10 Because my recollection is that Mr. Darden had pled
11 guilty to two counts initially before Judge Rakoff, and that
12 ended up before sentencing changed to a cooperation agreement --
13 and maybe I'm wrong about this -- a cooperation agreement where
14 he replied to the two counts and then pled to a third count
15 pursuant to a cooperation agreement.

16 MR. KINDER: I think that's right, your Honor.

17 And the 2005 convictions that Mr. Mead is referring to
18 are Manhattan DA's Office convictions relating to fraud and
19 four counts of grand larceny relating to two separate fraud
20 schemes in total.

21 THE COURT: Okay. And because I may have gotten a
22 letter on this, but I don't know if I've gotten actually
23 documentation with regard to -- in other words, is it just
24 going to be cross-examination of him or --

25 MR. KINDER: Your Honor, I think it would be primarily

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1 cross-examination. But we also would likely move in a copy of
2 the certified judgment.

3 THE COURT: Okay. So I'd like to see a copy of that
4 if you have it. And also, has that been shared with the
5 defense? I know notices have been provided, but has it been
6 shared with the defense?

7 MR. KINDER: The judgment I have sitting on my desk in
8 my office. We've not shared it with them. It's the state
9 court judgment, but it relates to -- I think it's one count of
10 grand larceny in the first degree, three counts of grand
11 larceny in the second degree, and the state fraud statute. So
12 we will provide that both to defense and to the Court as soon
13 as we're done here.

14 THE COURT: All right. So Mr. Darden, that's
15 something that you can discuss with your lawyers, something for
16 you to take into account as you think about whether or not you
17 want to testify.

18 So if you could, when you get back to your office, if
19 you could send a copy of the judgment to defense counsel so
20 that they have it, to the extent they're going to have any
21 additional conversations with Mr. Darden this evening or
22 tomorrow morning.

23 Okay. So anything else, Mr. Mead?

24 MR. MEAD: Last thing I think, your Honor. I think we
25 raised this at the end of last week, the issue about whether

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1 the defense would be able to make arguments based on Calvin
2 Darden, Sr. not testifying in this case. I wanted to
3 understand -- I mean, given that they moved to preclude him,
4 wanted to understand what the Court's ruling on that was so
5 that we can potentially do something with rebuttal if we
6 decided we wanted to.

7 THE COURT: I guess what I would say is, from my
8 perspective and – then I'll hear from the defense – despite all
9 the things that have been submitted, I've never met him. I've
10 never conducted an evaluation of it. There are certain medical
11 records that have been submitted. So I don't know -- well, let
12 me ask is there going to be an argument that he is --

13 MR. RICCO: You know, Judge --

14 THE COURT: Because it's going to be a missing witness
15 charge anyway.

16 MR. RICCO: You know, Judge, I've tried a lot of cases
17 in this district, other districts. I've never been in a case
18 where a prosecutor is just really finger pointing at the
19 defense about things. Judge, we know what to argue and we know
20 what the rules are. And we read your ruling, and we said we're
21 going to comply with that. And at this juncture, Judge, that's
22 my response to Mr. Mead.

23 THE COURT: Yeah. So I guess what I would say is the
24 following: If you want to put it in a rebuttal case that
25 includes -- you should think about that. It doesn't sound like

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1 there's going to be an argument in that regard, but there's
2 certainly sort of hanging over the case is that he would be one
3 of the people that the missing witness general charge would be
4 applicable to because he was somebody mentioned and the like.

5 And it was, I think there's sufficient -- even
6 though -- there's sufficient information done in the
7 cross-examination that I think it would be -- obviously I'll
8 hear from the defense, if the government decides to do this.
9 It seems like the issue has been raised, even if not argued
10 necessarily, that the government, if they wanted to -- the
11 defense has put on a case -- they could put on a rebuttal case.

12 Obviously I don't know what that information would be,
13 and it would have to be obviously admissible, but I don't know.
14 So I mean, I'll leave it at that, and the parties sort of
15 discuss that or you should think about that, I guess. The
16 government should give that thought.

17 Okay. Is there anything from the defense that we
18 should talk about before we move to the jury instructions?

19 MR. DONALDSON: Not from the defense related to what
20 the Court just talked about, no.

21 THE COURT: Okay. So let's turn to the jury
22 instructions. What is the first page that the -- I'll first
23 ask the government, and then I'll ask the defense, and we'll
24 turn to the first page that there's a comment on.

25 MR. MEAD: Page 8 from the government.

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1 THE COURT: Anything before page 8, Mr. Donaldson?
2 Mr. Ricco?

3 MR. RICCO: No, your Honor.
4 THE COURT: All right. So Mr. Mead, was this with
5 regard to the questions I had for the parties?

6 MR. MEAD: Yes, your Honor.

7 THE COURT: Okay. Are there going to be any
8 stipulations? I don't recall whether there are any. I don't
9 think so yet.

10 MR. MEAD: There haven't been any yet, and we don't
11 expect there to be any, your Honor.

12 THE COURT: Okay. I could leave it in, but if there
13 are no stipulations -- I mean, I could leave it in or take it
14 out. And by "it," I mean the reference to stipulations of the
15 parties.

16 MR. MEAD: Shorter is often better. I think we prefer
17 to keep it out if there are no stipulations. I think there's
18 also a substantive jury charge on stipulations later on, and we
19 propose taking that out as well.

20 THE COURT: Any objection to that?

21 MR. RICCO: None, Judge.

22 THE COURT: Okay. So what we're going to do is I'm
23 going to strike "and the stipulations of the parties." And so
24 that sentence will end at "evidence." So the second sentence
25 of instruction six will read, "The evidence in this case is the

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1 sworn testimony of the witnesses," and then I'll add an "and".

2 "And the exhibits received in evidence." Okay.

3 And now a little bit further down there's a reference
4 to demonstratives. Will there be demonstratives during
5 summations?

6 MR. MEAD: I think there is at least a good chance
7 that there will be. I'm doing the rebuttal, and I think
8 there's a good chance it will have a rebuttal demonstrative.

9 THE COURT: Okay. All right.

10 MR. RICCO: Yes.

11 THE COURT: That's what I figured. The only thing I
12 would request is that in advance of the summations that you
13 share the demonstratives so that if there are objections, we
14 can deal with those objections.

15 MR. RICCO: We agree, your Honor.

16 THE COURT: So that's page 8.

17 What's the next item where there's a comment to the
18 instruction?

19 MR. MEAD: The next thing we have is just the Court's
20 highlighted language on page 15 about the defendant's testimony
21 or lack thereof.

22 THE COURT: Anything in between 8 and 15 from the
23 defense?

24 MR. RICCO: No, your Honor. Thank you.

25 THE COURT: So I think by tomorrow we will know this.

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1 So what will happen is -- well, Mr. Mead, were you just
2 pointing out that there was highlighting or was it just
3 pointing out the highlighting or --

4 MR. MEAD: We think the Court's language in either
5 situation is appropriate.

6 THE COURT: Anything with regard to the language?

7 MR. RICCO: No. Language is fine.

8 THE COURT: So depending upon if Mr. Darden testifies,
9 obviously I'll use the portion that talks about that Mr. Darden
10 testified and vice versa. So we can take care of that and make
11 that change.

12 Now, the next thing is instruction 16, which is
13 defendant's reputation. Is Mr. Slade -- because I don't think
14 Mr. Sienko knows, other than through this matter, Mr. Darden.
15 But my understanding is Mr. Slade does know Mr. Darden in
16 context other than the assistance that Mr. Slade may have
17 provided to Mr. Darden in this -- with regard to the -- I think
18 it's the vision plan, but I don't know.

19 So is there going to be any testimony about character,
20 reputation, anything like that?

21 MR. RICCO: No, your Honor.

22 THE COURT: Okay. So I would propose taking that out.
23 Any objection?

24 MR. MEAD: No, your Honor.

25 THE COURT: Okay. So that will come out. That's

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1 instruction 16.

2 All right. The next comment from the government, and
3 then we'll see if the defense has something.

4 MR. MEAD: Page 17 on instruction number 19, your
5 Honor.

6 THE COURT: Anything with regard to instruction 18
7 from the defense?

8 MR. RICCO: No, Judge.

9 THE COURT: All right. So instruction 19 deals with
10 the use of evidence obtained pursuant to searches. Mr. Mead,
11 what do you have a proposal or what's the issue?

12 MR. MEAD: So the instruction as written is limited to
13 email accounts and electronic devices. There was evidence
14 about a search of a house. We can, I think, add "and premises"
15 or "and homes or houses" or something like that at the end of
16 the first sentence.

17 And then again where it says "searches of online
18 accounts and electronic devices," adding in something about
19 homes or premises, as well, in that sentence.

20 THE COURT: So it would be at the end of the first
21 sentence, the sentence will read as follows, subject to hearing
22 from the defense: "You have heard testimony about evidence
23 seized pursuant to search warrants signed by a judge from email
24 accounts, electronic devices, and premises or homes." I could
25 do either one. Or residences?

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1 MR. MEAD: What about "and a home," your Honor?

2 THE COURT: And a home, is that --

3 MR. RICCO: That's fine, Judge.

4 THE COURT: "And a home." Okay.

5 And I'm sorry, Mr. Mead, where was the other place?

6 MR. MEAD: Two sentences later, the sentence beginning
7 "searches of online accounts."

8 THE COURT: "Searches of online accounts, electronic
9 devices, and homes are entirely appropriate." Okay. Or should
10 I say "and a home"? Because it seems more general, so I would
11 just say "and homes"?

12 MR. MEAD: That's our proposal, your Honor.

13 THE COURT: Any objection to that?

14 MR. RICCO: No, sir.

15 THE COURT: Okay. So that sentence will read
16 "searches of online accounts, electronic devices, and homes are
17 entirely appropriate law enforcement actions." Okay?

18 Next?

19 MR. MEAD: The highlighted instruction number 20 on
20 page 18, your Honor.

21 THE COURT: Yes. So 20 is particular investigative
22 techniques not required.

23 MR. RICCO: Your Honor, we're not going to be
24 presenting any arguments whatsoever about investigative
25 techniques in this case.

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1 THE COURT: So I'll strike it for now, and I take it
2 the government -- are there going to be any issues relating to
3 that from the government's perspective?

4 MR. MEAD: I don't think so, your Honor. We typically
5 ask for it to be kept in, even if there are no arguments about
6 it at all. Obviously the jury may think, why is there no DNA,
7 why is there no whatever? I don't see much downside in keep it
8 in --

9 MR. DONALDSON: We would object to keeping it in if
10 there's not going to be any argument about it. Because the
11 first sentence is "you have heard reference to certain
12 investigative techniques." If there has not been any reference
13 to certain investigative techniques, then that should not be in
14 there, in my opinion.

15 THE COURT: I mean, I think there is some indication
16 that there were searches conducted.

17 MR. DONALDSON: Judge, I just --

18 THE COURT: But not other techniques.

19 MR. DONALDSON: I guess what my concern is with
20 responding to what the government just said, which is -- I
21 guess in my opinion it's incorrect, first sentence says "you
22 have heard reference to certain investigative techniques that
23 were used or not used by the government in this case." If that
24 seems to relate to something that defense would say in their
25 argument to the jury about whether or not certain investigative

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1 techniques were used, why they weren't used, it's a traditional
2 response by the government to say that, I get that. But if
3 there's not going to be any reference to that in our argument,
4 then that would seem to make this particular paragraph
5 irrelevant, but inapplicable. As it says, not applicable.

6 THE COURT: What I think I will do is I'll strike that
7 first sentence and include the rest of it, which I think
8 doesn't reference "you've heard or testimony" or anything like
9 that.

10 I've already given a preliminary instruction about
11 this very issue. And so I don't think there's any prejudice to
12 just reiterating what I had said in my preliminary remarks to
13 the jury without that first sentence. So if there is any
14 confusion, then the jury starts thinking, did I miss something?
15 Or what have you. All right.

16 I'll go to the defense now. Mr. Donaldson, Mr. Legon,
17 Mr. Ricco, what would be your next comment?

18 MR. DONALDSON: One second, your Honor.

19 THE COURT: And while you're looking, I'll ask what's
20 the government's next comment?

21 MR. MEAD: Highlighted instructions on page 20, your
22 Honor.

23 THE COURT: Okay. So anything from the defense before
24 page 20?

25 MR. RICCO: No.

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1 THE COURT: So the first one is prior consistent
2 statements. I don't recall anything like that, but there may
3 have been something. I just don't remember.

4 MR. MEAD: I think Mr. Schmidt testified about
5 previous statements that Mr. Howard made about why he purchased
6 the team and that he loved women's basketball and wanted to buy
7 it for that purpose. And there was cross-examination from the
8 defense on that exact subject, the real reason that they
9 thought that he had decided to buy the team.

10 MR. DONALDSON: I think, again, Judge just regarding
11 the prosecutor's response to that, that wouldn't be appropriate
12 for this particular instruction because it relates to testimony
13 given by the same person as the first sentence, or at least I
14 think it says that. "You have heard evidence during the trial
15 that before testifying in this trial that at least one witness
16 made statements that was the same as or similar to the
17 testimony that he or she gave on the witness stand." So I
18 don't know whether or not Mr. Schmidt giving testimony that
19 would be consistent with Mr. Howard's testimony relates to this
20 particular instruction.

21 THE COURT: I think that the point is well taken. A
22 classic prior consistent statements are not sort of a witness
23 corroborate what somebody else says. It doesn't preclude the
24 argument that -- I think that this particular statement goes to
25 the witness who is on the stand and who then says that on a

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1 prior occasion they gave a consistent statement.

2 So I guess there may be an instruction that relates to
3 consistent statements between different witnesses, but I think
4 this is not applicable to that situation, Mr. Mead. In other
5 words, I've never seen the prior consistent statements where
6 it's another witness testifying, as opposed to another -- like,
7 a document where they've given a sworn testimony or something
8 like that that comes in where the witness him or herself is the
9 same person who testified to this statement at the trial.

10 MR. MEAD: I'm not going to belabor the point too much
11 because I think it's not a particularly critical instruction
12 with the government here. I do think that a prior consistent
13 statement can come in through the witness himself or from
14 someone who heard the witness say that statement, and I think
15 the language in this instruction covers both. That being said,
16 if it's the Court's ruling that this is coming out, again, it's
17 not particularly significant.

18 THE COURT: Again, I'll take a look at it, but my
19 initial reaction is that it will come out. And obviously,
20 you're free to argue that Mr. Howard or any other witness said
21 you know what he said on the stand was corroborated by other
22 people to whom he made statements back at the time.

23 MR. DONALDSON: Judge, just to button that up, the
24 last sentence of this particular instruction, number 24, again,
25 specifically relates -- well, says the same, witness making

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1 statements before that were similar to what they said before,
2 so it directly says --

3 THE COURT: I guess what I would say – and we're going
4 to take this out – Mr. Mead, if there's language that you would
5 propose that modifies that another -- in particular, if another
6 judge has given an instruction like that, obviously I would
7 hear from you with regard to that.

8 MR. MEAD: Understood, your Honor.

9 THE COURT: Next is the stipulations. My
10 understanding is the parties agree that there aren't any
11 stipulations, so that can come out. All right.

12 MR. DONALDSON: Yes, Judge.

13 THE COURT: Okay. And then what is the next item the
14 government has?

15 MR. MEAD: I think the next thing we have, your Honor,
16 is page 36.

17 THE COURT: Okay. Does the defense have any comment
18 before page 36?

19 MR. RICCO: One second, your Honor.

20 THE COURT: Sure.

21 MR. RICCO: The answer is no. And I'm just double
22 checking back through the notes.

23 MR. DONALDSON: One second.

24 MR. RICCO: I'm sorry, Judge. Can we have a moment?

25 THE COURT: Uh-huh.

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1 MR. RICCO: Judge, we have nothing up to instruction
2 number 42. Nothing, that's on page 36, Judge.

3 THE COURT: Okay. Mr. Mead, where on page 36 does the
4 government have a comment?

5 MR. MEAD: The Court highlighted a potential conscious
6 avoidance charge at the very bottom and the top of 37, your
7 Honor.

8 THE COURT: Yes.

9 MR. MEAD: And the government does not intend to
10 proceed on a conscious avoidance theory, and so that could be
11 stricken.

12 MR. RICCO: We agree.

13 THE COURT: And I think there's a later separate
14 standalone conscious avoidance charge that can also be stricken
15 that we might as well address right now. Oh, so it's
16 instruction 50. So do the parties agree that instruction 50
17 can come out also?

18 MR. MEAD: Yes, your Honor.

19 THE COURT: Defense?

20 MR. RICCO: Yes.

21 MR. DONALDSON: Yes.

22 THE COURT: So 50 is out.

23 And so let's go back to page 36 or 36 to 37. What is
24 the next item that the government -- oh, Mr. Ricco, you said
25 nothing before 42. Was that what you were referring to?

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1 MR. RICCO: Same issue that Mr. Mead raised.

2 THE COURT: What's the next comment after instruction
3 42?

4 MR. MEAD: Our next thing is page 47, instruction 49,
5 your Honor.

6 THE COURT: Okay. Does the defense have any comments
7 prior to instruction 49, which is co-conspirator statements?

8 MR. RICCO: No, your Honor. Oh, wait, hold on one
9 second. I'm sorry.

10 MR. DONALDSON: No, Judge. We're fine. Thank you.

11 THE COURT: Okay. Yes, Mr. Mead?

12 MR. MEAD: So we're on page 47 instruction 49.

13 I think there's a stray reference to "the defendants"
14 plural in the line close to the bottom that begins "factual
15 issues before you."

16 THE COURT: Okay. "Defendant." "You may consider
17 against the defendant any acts." Okay. I'll strike the "S."

18 MR. MEAD: And then very similarly, on page 48,
19 instruction 51, your Honor, the first line, I think it should
20 be "the defendant" rather than "a defendant."

21 THE COURT: Any objection to that?

22 MR. RICCO: No, Judge.

23 THE COURT: Okay. All right. That change will be
24 made.

25 MR. MEAD: And then our last thing, your Honor,

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1 page 51.

2 THE COURT: Yes.

3 MR. MEAD: Instruction 54. The second line refers to
4 the essential elements. We would consent to striking the word
5 "essential" if the defense wanted that. If the defense wants
6 to leave in "essential," though, we're willing to leave it in.7 THE COURT: Oh, I see. It's the second sentence, "the
8 government to prevail must prove the essential elements --"9 MR. RICCO: I think Mr. Mead is right. It should say
10 just "elements."

11 THE COURT: So we'll take out "essential"?

12 MR. RICCO: Uh-huh.

13 THE COURT: And that was it from the government?

14 MR. MEAD: Yes, your Honor.

15 There's a related issue with the verdict form, but
16 that's it for these jury instructions.17 THE COURT: And we'll turn to -- any additional
18 comments from the defense?

19 MR. DONALDSON: I do not at this time, your Honor, no.

20 THE COURT: Okay. All right. So my process is a
21 couple of things. Well, let me raise something because I do
22 not send a copy of the indictment and I don't provide it to the
23 jury and I don't send it back.24 In other cases, if needed, I've actually copied and
25 pasted sections of the indictment, to the extent it was

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1 necessary to explain the charges. Here neither party has
2 suggested it, and I don't believe it's necessary here to do
3 that. Otherwise they're not going to have the indictment.

4 So if you want to think about that -- and I know
5 judges differ, I think, in whether they do that. My practice
6 is just whatever is -- so in recounting, you know, Count Five
7 states whatever, and then I have the language from the
8 indictment. So there's no -- we can insert that if the parties
9 want or if one party thinks there's a reason for it.

10 I mean, you can think about it. It's just something
11 that I sort of notice. I wanted to just let the parties know.
12 Because in other cases I have had those sections, but I'm not
13 sure -- and it would literally just be whatever the language
14 is, maybe changed a little bit because - am I correct it was a
15 superseding indictment with just Mr. Darden?

16 MR. MEAD: You are, your Honor.

17 THE COURT: Okay. So I raise it, the only thing I ask
18 is that you let us know by tomorrow morning whether that's
19 something that you think is something that we should address in
20 some way. The other thing is, as you see in the instructions,
21 I provide a copy -- every juror gets their own copy of the
22 instructions and the verdict sheet.

23 Obviously the verdict sheet is only filled out by the
24 foreperson. There's a slight discrepancy. We can talk about
25 this in a moment when we get to the verdict sheet. I think in

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1 my instructions, I may say, signed by each of the jurors. I've
2 done it -- I've seen it done both ways. I think on my last
3 trial, I think I just had the foreperson.

4 I think where I did do it was a difficult circumstance
5 with my death penalty case where I think there were reasons
6 that certainly defense would want to have the tally for each of
7 the jurors. And again, there's no magic here, so if the
8 parties are okay just having the foreperson, we can modify the
9 language in the current instructions.

10 (Continued on next page)

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2 MR. MEAD: We don't have a strong view either way,
3 your Honor.

4 THE COURT: Does the defense?

5 MR. RICCO: No strong view, Judge.

6 THE COURT: In all likelihood it won't clutter up the
7 verdict sheet. We'll have the foreperson sign. Here's my
8 practice anyway to poll the jury. Either I or Ms. Disla will
9 poll the jury at the conclusion when they have reached a
10 verdict, assuming they reach a verdict. The foreperson will
11 pass the sheet to Ms. Disla who will pass it to me. I will
12 look at it to make sure it's filled out appropriately, and then
13 hand it back to Ms. Disla, rather than the foreperson will read
14 the verdict sheet. And then once the verdict sheet is read,
15 I'll ask Ms. Disla to poll the jury, and she'll go through one
through 12.

16 With regard to the alternates, you may have seen my
17 practices other than my death penalty case, I don't keep the
18 alternates here in the courthouse, but I tell them that they're
19 not yet done with their jury service. So they can go home, but
20 they're not to discuss the case. Basically same instructions
21 just in case we lose one of the 12, one of the alternates would
22 have to come back, and the jury would have to start their
23 deliberations from the beginning. So again, is there any
24 objection to approaching the alternates in that fashion?

25 MR. MEAD: Maybe for the alternates, not from the

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2 government, your Honor.

3 MR. RICCO: No, your Honor.

4 THE COURT: Okay. So should we move on to the verdict
sheet. Is there anything else in regard to the instructions?

5 MR. MEAD: No, your Honor.

6 THE COURT: Anything else from the defense.

7 MR. RICCO: No, your Honor. Thank you.

8 THE COURT: So I guess I have two questions. So the
9 government's proposed instructions are fairly straightforward
10 and I've seen it done that way. My question though with regard
11 to the defense suggestion is that, first, it breaks out the two
12 I guess schemes for lack of -- one, with respect to
13 Mr. Parsons. The other with respect to Mr. Howard. So my
14 first question is -- well, first, does the government have an
15 objection to breaking it out? I just have not done that
16 before.

17 MR. MEAD: I think we certainly have an objection to
18 the principle both for caution aiding and abetting breaking
19 out. I think also on Count Three which is the bank fraud, that
20 is only charged against Mr. Howard's side of the case because
21 of the involvement of BMO. I think that should clearly come
22 out. Just one second on the kind of broader question, your
23 Honor.

24 THE COURT: Any objection on Count Three since it's
25 just the one? Putting aside what theory of liability, but to

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2 removing the Chandler Parsons, and then we'll address the
3 theory of liability in a moment.

4 MR. RICCO: None, Judge.

5 THE COURT: All right.

6 MR. MEAD: As to breaking it out between Chandler
7 Parsons, Dwight Howard on Counts One and Two, we will leave it
8 to the Court, although we want it to be clear to the jury that
they could mark I guess either.

9 THE COURT: That it can be either or, or both?

10 MR. MEAD: Exactly, Judge.

11 THE COURT: Let me ask with regard, but they need to
12 be unanimous with regard to which scheme?

13 MR. MEAD: Correct, your Honor. They should reach
14 both questions.

15 THE COURT: Correct. So there may need to be some --
16 do we need to have some interlinear instructions in the verdict
17 form? In other words indicating, for example, on Count One the
18 charge of conspiracy to commit wire fraud or bank fraud, we the
19 jury find the defendant -- well, I think in the charge I do
20 say -- I can't remember whether it's broken out. I guess we
21 could put here check one that the options are you can check --
22 well, they have to fill out both, right. That they have to
23 address both, but they have to be unanimous as to the
24 particular scheme.

25 MR. MEAD: That makes sense, your Honor. I think if

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2 the Court could perhaps send us a version by the end of
3 tomorrow night so we can all make sure we're on the same page.

4 THE COURT: Now you're giving me homework assignments.

5 MR. RICCO: You see what happens, Judge.

6 THE COURT: You can't talk you sending emails at three
7 in the morning, so I think, whatever, it's trial. And I get
it. It's fine.

8 MR. RICCO: Judge, when you told us break that work up
9 and get it done, I took it to heart.

10 THE COURT: You saw that I responded.

11 MR. RICCO: I did, at 3:30, Judge.

12 THE COURT: Yes. We'll make modifications. And
13 absolutely I want to get sign off from the parties before we
14 present this to the jury. But reach both and unanimous with
15 regard to each. So that would be for Count One, Count two and
16 that's it. Count One and two. Before we get the what theory
17 of liability, any objection to what we just discussed with
18 regard to Count One and Two indicating to the jury that they
19 need to answer both questions. And they need to be unanimous
20 with regard to which. And I don't know whether scheme it's or
21 which regard to either Mr. Parsons or Mr. Howard.

22 MR. RICCO: Agreed.

23 MR. DONALDSON: No objection to that.

24 THE COURT: So we'll come up with some language.
25 There's no magic here, and the parties can feel free to suggest

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2 modifications. Let me ask with regard to the theory of
3 liability. Is there case law, number one, that would require
4 the jury be unanimous as to the theory of liability versus the
5 guilt? I have never seen -- so the aiding and abetting is
6 often charged and I have never seen it broken out, or at least
7 I don't recall ever breaking it out verdict form in prior
cases.

8 So my first question is, is there case law about when
9 giving an instruction with regard to the different theories of
10 liability whether a jury has to be unanimous as to that theory
11 of liability? Because I think that impacts whether or not this
12 is something that would be necessary and would lead to
13 confusion. Yes, Mr. Donaldson, Mr. Ricco?

14 MR. DONALDSON: I guess the quick answer to the
15 question is no. I've never seen case law that says what the
16 Court just asked. I have not seen that, but I could check.

17 THE COURT: And I there are cases where the issue of
18 principle, certainly aiding and abetting, and the issue of
19 principle and then different causation. Absent case law that
20 breaks it out -- well, let me ask the government. I just
21 haven't seen it broken out. I know what the law is, and I
22 don't recall in discussing aiding and abetting liability, I
23 don't think the instruction says, you all have to agree that
24 it's aiding and abetting versus principle. And if you want to
25 talk to the Appellate folks -- Mr. Ritchin's been around for a

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2 while. You have a thought on this? I don't know. I've never
3 seen it broke out that way. Because of that, I just tend to
4 think it's probably something that's not necessary.

5 MR. RITCHIN: I agree, your Honor. I haven't seen it
6 broken out this way. And I think there's a theoretical problem
7 with doing so. So, for example, on wire fraud, you can
8 willfully cause a wire to be sent, but be responsible as a
9 principle on the mens rea, so it would cause confusion.

10 THE COURT: I think it is a potential for confusion in
11 that regard. I guess what I would say is, absent examples of
12 where one of my colleagues or a judge in another district has
13 done this and supported by some case law, I would remove the
14 "if guilty, what theory of liability," putting aside also it
15 does sort of go to the jurors in deliberation and their process
16 itself. I guess Mr. Ricco, Mr. Donaldson, Mr. Legon, if you
17 have something, I would ask that you propose it. Otherwise,
18 we'll modify this verdict form consistent with what we've
19 talked about today and provide the next iteration of the form
20 to the parties later tonight or tomorrow at some point. But I
21 would ask that to the extent there is some case law or
22 something like that, if you could get it to us tonight relating
23 to that particular issues.

24 Obviously we could still modify if you still have an
25 objection and you come up with case law, I'll still consider
it. I just want to get the next iteration out to you folks.

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2 Why don't we do this, I'll get the next iteration out to
3 everyone. And if you do research and you figure something out
4 that should be tweaked, just let us know as soon as you can.
5 The verdict sheet isn't that long. It's about to become
6 shorter. Okay. Is there anything else with regard to the
verdict sheet?

7 MR. MEAD: No, your Honor.

8 THE COURT: From the defense?

9 MR. RICCO: No, your Honor. Thank you.

10 THE COURT: And are there any outstanding issues that
11 we have not discussed that we should address at this stage?

12 MR. MEAD: No, your Honor.

13 THE COURT: From the defense.

14 MR. RICCO: No, your Honor. But just for the sake of
15 the record, I think before the lunch break I had said I wanted
16 to take a look at a document.

17 THE COURT: Yes.

18 MR. RICCO: And I did, and I shared that document with
19 the government, and they were able to answer the question I had
20 in my mind about it, so it's a moot issue.

21 THE COURT: Okay. That's great. One less thing. I
22 mean, look, this is a job where you have to make decisions, but
23 if I have one less, that's fine with me. But obviously if
24 there are things that come up overnight, please let us know and
25 we can address it tomorrow. It seems to me as if we will --

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2 let's see. I will allocute Mr. Darden in the morning, and
3 we'll see where that goes. All right. Anything else from the
government?

4 MR. MEAD: No, your Honor.

5 THE COURT: From the defense?

6 MR. DONALDSON: No, your Honor.

7 THE COURT: Okay. So I think that's fine. We don't
8 have to be on the record for this.

9 (Discussion held off the record)

10 THE COURT: We'll stand adjourned. I'll see everybody
11 at 10. Back on the record. So does the defense request for
12 the time being that the sidebar conversation remain sealed? In
13 other words, could we get the transcript and that it not be
14 read, that it remain under seal, available only to me, but not
15 to the government and not to the defense at this stage?

16 MR. RICCO: For now, Judge.

17 THE COURT: For now. So I don't know whether that's
18 possible. Is there any objection from the government?

19 MR. MEAD: No, your Honor.

20 THE COURT: So that portion of the sidebar will remain
21 under seal only available to me at this stage. Okay.

22 MR. RICCO: Thank you, Judge.

23 THE COURT: Thank you very much. We'll stand
24 adjourned. See everybody tomorrow morning.

25 (Adjourned to October 2, 2024 at 10:00 a.m.)

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